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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0447; Directorate Identifier 2013–NE–17–AD; Amendment 39–17488; AD 2013–10–52]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) GE90–110B1 and GE90–115B turbofan engines. This emergency AD was sent previously to all known U.S. owners and operators of these engines. This AD prohibits operation of an airplane with affected transfer gearbox assemblies (TGBs) installed on both engines five days after the effective date of this AD. This AD was prompted by reports of two failures of TGBs which resulted in in-flight shutdowns (IFSDs). We are issuing this AD to prevent additional IFSDs of one or more engines, loss of thrust control, and damage to the airplane.

DATES: This AD is effective June 26, 2013 to all persons except those persons to whom it was made immediately effective by Emergency AD 2013–10–52, issued on May 16, 2013, which contained the requirements of this amendment.

We must receive comments on this AD by August 12, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, Ohio 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *jason.yang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 16, 2013, we issued Emergency AD 2013–10–52, which prohibits operation of an airplane with affected TGBs installed on both engines five days after receipt of the emergency AD. The emergency AD was sent previously to all known U.S. owners and operators of these GE90–110B1 and GE90–115B turbofan engines. This action was prompted by reports of two failures of TGBs which resulted in IFSDs. Investigation has revealed that the failures were caused by TGB radial gear cracking and separation. Further inspections found two additional radial gears with cracks. This condition, if not corrected, could result in additional IFSDs of one or more engines, loss of thrust control, and damage to the airplane.

Relevant Service Information

We reviewed GE GE90–100 Series Alert Service Bulletin (ASB) No. GE90–100 S/B 72–A0558, Revision 1, dated May 14, 2013, and GE90–100 Series ASB No. GE90–100 S/B 72–A0559, dated May 14, 2013. The ASBs provide additional information regarding the affected TGBs.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD prohibits operation of an airplane with affected TGBs installed on both engines five days after the effective date of this AD.

Interim Action

We consider this AD to be an interim action. We anticipate that further AD action will follow.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the five-day compliance time. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2013–0447 and Directorate Identifier 2013–NE–17–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments

received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 20 engines installed on airplanes of U.S. registry, and because the compliance is only an airplane operation prohibition, the cost of compliance on U.S. operators is $0.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–10–52 General Electric Company: Amendment 39–17488; Docket No. FAA–2013–0447; Directorate Identifier 2013–NE–17–AD.

(a) Effective Date

This airworthiness directive (AD) is effective June 26, 2013 to all persons except those persons to whom it was made immediately effective by Emergency AD 2013–10–52, issued on May 16, 2013, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

General Electric Company (GE) GE90–110B1 and GE90–115B turbofan engines with a transfer gearbox assembly (TGB), part number 2115M33G07 or 2115M33G08, serial number (S/N) listed in Figure 1 to paragraph (c) of this AD, installed.

FIGURE 1 TO PARAGRAPH (c)—TRANSFER GEARBOX ASSEMBLY S/NS

FIA0HYRT	FIA0JGE8	FIA0J3YC	FIA0JRTW
FIA0HV16	FIA0JEH2	FIA0JEH3	FIA0K4M6
FIA0J31V	FIA0JGE7	FIA0JAVL	FIA0JN33
FIA0H0R1	FIA0JLAV	FIA0J70G	FIA0K7TV
FIA0J3YE	FIA0JLAY	FIA0HV18	FIA0K56H
FIA0J1L0	FIA0JGFC	FIA0J70E	FIA0K7TY
FIA0J3YF	FIA0JN31	FIA0JGE9	FIA0K7TW
FIA0J7FF	FIA0JN3Y	FIA0JLAW	FIA0K4M5
FIA0J5LR	FIA0JGFF	FIA0H0R3	FIA0K56G
FIA0J7FH	FIA0JN30	FIA0JGE6	FIA0JN32
FIA0J7FC	FIA0J7Y9	FIA0JT56	FIAAV6M1
FIA0J70A	FIA0JAVM	FIA0JT57	FIA0K7T1
FIA0J7Y8	FIA0JGFA	FIA0J7FE	FIAAP6C4
FIA0J7Y7	FIA0JLAT	FIA0JT6K	FIA0K7T0
FIA0J31W	FIA0JT58	FIA0JT6L	FIAATMYA
FIA0J70C	FIA0K2H1	FIA0JLAR	FIA0K56K
FIA0JAVH	FIA0HP4Y	FIA0JRT5	FIAATH0T
FIA0J7FG	FIA0HV17	FIA0JRT4	FIA0K56J
FIA0J70F	FIA0HV19	FIA0JT6J	FIAAPA8T
FIA0JAVK	FIA0HWG3	FIA0K2H4	FIAAVTMA
FIA0JEH4	FIA0J3YG	FIA0JRTV	FIA0JRTY
FIA0J5LY	FIA0H0R0	FIA0K2H2	FIAAR7C0
FIA0J5LT	FIA0HYRV	FIA0K2H3	FIAARW1V
FIA0J5LW	FIA0H0R2	FIA0K4M2	FIA07PAN
FIA0JEH5	FIA0J1LY	FIA0K4M4	FIA06VPP
FIA0JAVJ	FIA0J31T	FIA0JT59	F1A03RR4
FIA0JGE5	FIA0J1LW	FIA0K2H5	FIA0JGFE
FIA0JEH6	FIA0J5LV	FIA0K4M1	FIA02N6R
FIA0JGEH	FIA0HYRR	FIA0K56L	
FIA0J1LV	FIA0J31R	FIA0K4M3	

(d) Unsafe Condition

This AD was prompted by reports of two failures of TGBs which resulted in in-flight shutdowns (IFSDs). We are issuing this AD to prevent additional IFSDs of one or more engines, loss of thrust control, and damage to the airplane.

(e) Compliance

(1) Comply with this AD within the compliance time specified, unless already done.

(2) Before further flight, do not operate the airplane if more than one installed engine has a TGB S/N listed in Figure 1 to paragraph (c) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(g) Related Information

(1) For further information about this AD, contact: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *jason.yang@faa.gov.*

(2) GE GE90–100 Series Alert Service Bulletin (ASB) No. GE90–100 S/B 72–A0558, Revision 1, dated May 14, 2013, and GE90–100 Series ASB No. GE90–100 S/B 72–A0559, dated May 14, 2013, pertain to the subject of this AD.

(3) For the service information referenced in this AD, contact: General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, Ohio 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on June 13, 2013.

Frank P. Paskiewicz,

Acting Director, Aircraft Certification Service.

[FR Doc. 2013–15001 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71

[Docket FAA No. FAA–2013–0505; Airspace Docket No. 13–AWP–4]

Amendment of Class D Airspace; El Monte, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** of May 14, 2013, that amends Class D airspace at El Monte Airport, El Monte, CA. In that rule, the legal description references the airport bearing incorrectly.

DATES: *Effective Date:* 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Rick Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** amending Class D airspace at El Monte Airport, El Monte, CA (78 FR 28132, May 14, 2013). In the regulatory text, the El Monte Airport 097° bearing was incorrect, and is now corrected to the 111° bearing.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on May 14, 2013 (78 FR 28132), Airspace Docket No. 11–AWP–16, FR Doc. 2013–11182, is corrected as follows:

§ 71.1 [Amended]

■ On page 28133, column 1, line 41, remove '097° bearing', and insert '111° bearing'.

Issued in Seattle, Washington, on June 17, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–15137 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0926; Airspace Docket No. 12–ANM–24]

Establishment of Class E Airspace; Port Townsend, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Jefferson County International Airport, Port Townsend, WA, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Jefferson County International Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On April 29, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Port Townsend, WA (78 FR 25005). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Jefferson County International Airport, with a segment extending from the radius of the airport to 10.1 miles west of the airport, and from 1,200 feet above the surface within stated geographic coordinates of the airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not

a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Jefferson County International Airport, Port Townsend, WA.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Port Townsend, WA [New]

Jefferson County International Airport, WA
(Lat. 48°03′14″ N., long. 122°48′38″ W.)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of the Jefferson County International Airport and within 2.5 miles each side of the 284° bearing of the Jefferson County International Airport extending from the 9.3-mile radius to 10.1 miles west of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 48°24′00″ N., long. 123°18′00″ W.; to lat. 48°23′00″ N., long. 122°35′00″ W.; to lat. 47°52′00″ N., long. 122°33′00″ W.; to lat. 47°53′00″ N., long. 123°00′00″ W.; to lat. 48°05′00″ N., long. 123°17′00″ W.; lat. 48°10′00″ N., long. 123°23′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on June 17, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–15135 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1036]

Safety Zones & Special Local Regulations; Recurring Marine Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones for eleven fireworks displays and two swim events in the Sector Long Island Sound area of responsibility on various dates and times listed in the table below. This action is necessary to provide for the safety of life on navigable waterways during these fireworks displays and swim events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulations in 33 CFR 165.151 will be enforced during the dates and times listed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Scott Baumgartner, Waterways Management Division, U.S. Coast Guard Sector Long Island Sound; telephone 203–468–4559, email *Scott.A.Baumgartner@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.151 on the specified dates and times as indicated in tables below. If the event is delayed by inclement weather, the regulation will be enforced on the rain date indicated in table below.

TABLE 1 TO § 165.151

6.3 Vietnam Veterans/Town of East Haven Fireworks	• Date: June 29, 2013. • Rain date: June 30, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters off Cosey beach, East Haven, CT in approximate position, 41°14′19″ N, 072°52′09.80″ W (NAD 83).
7.3 City of Westbrook, CT July Celebration Fireworks	• Date: July 2, 2013. • Rain date: July 6, 2013. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Westbrook Harbor, Westbrook, CT in approximate position, 41°16′10″ N, 072°26′14″ W (NAD 83).
7.9 City of Middletown Fireworks	• Date: July 3, 2013.

TABLE 1 TO § 165.151—Continued

	• Rain date: July 5, 2013. • Time: 8:45 p.m. to 10:15 p.m. • Location: Waters of the Connecticut River, Middletown Harbor, Middletown, CT in approximate position 41°33′47.50″ N, 072°38′38.39″ W (NAD 83).
7.12 City of Stamford Fireworks	• Date: July 3, 2013. • Rain date: July 5, 2013. • Time: 8:30 p.m. to 10 p.m. • Location: Waters of Fisher's Westcott cove, Stamford, CT in approximate position 41°02′09.56″ N, 073°30′57.76″ W (NAD 83).
7.13 City of West Haven Fireworks	• Date: July 3, 2013. • Rain date: July 5, 2013. • Time: 8:45 p.m. to 10:30 p.m. • Location: Waters of New Haven Harbor, off Bradley Point, West Haven, CT in approximate position 41°15′07.00″ N, 072°57′26.00″ W (NAD 83).
7.24 Village of Asharoken Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:45 p.m. to 10 p.m. • Location: Waters of Northport Bay, Asharoken, NY in approximate position, 41°56′21.20″ N, 073°21′15.14″ W (NAD 83).
7.34 Devon Yacht Club Fireworks	• Date: July 6, 2013. • Rain date: July 7, 2013. • Time: 8:45 p.m. to 10 p.m. • Location: Waters of Napeague Bay, in Block Island Sound off Amagansett, NY in approximate position 40°59′41.40″ N, 072°06′08.70″ W (NAD 83).
7.36 Friar's Head Golf Club Fireworks	• Date: July 6, 2013. • Rain date: July 7, 2013. • Time: 9:15 p.m. to 10 p.m. • Location: Waters of Long Island Sound off Baiting Hollow, NY in approximate position, 40°58′19.53″ N, 072°43′45.65″ W (NAD 83).
7.42 Connetquot River Summer Fireworks	• Date: July 3, 2013. • Rain date: July 5, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY in approximate position 40°43′30.03″ N, 073°08′40.25″ W (NAD 83).
7.44 National Golf Links Fireworks	• Date: July 6, 2013. • Rain date: July 7, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of the Great Peconic Bay ¾ of a mile northwest of Bullhead Bay, Shinnecock, NY in approximate position 40°55′11.79″ N, 072°28′04.34″ W (NAD 83).
9.4 The Creek Fireworks	• Date: August 31, 2013. • Rain date: September 1, 2013. • Time: 7:45 p.m. to 9 p.m. • Location: Waters of Long Island Sound off the Creek Golf Course, Lattingtown, NY in approximate position 40°54′13.00″ N 073°35′58.00″ W (NAD 83).

TABLE 2 TO § 165.151

1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim	• Date: July 12, 2013. • Time: 7 a.m. to 12 p.m. • Location: Waters of the Great South Bay, NY. Starting Point at the Fire Island Lighthouse Dock in approximate position 40°38′01″ N 073°13′07″ W, northerly through approximate points 40°38′52″ N 073°13′09″ W, 40°39′40″ N 073°13′30″ W, 40°40′30″ N 073°14′00″ W, and finishing at Gilbert Park, Brightwaters, NY at approximate position 40°42′25″ N 073°14′52″ W (NAD 83).
1.6 Swim Across America Greenwich	• Date: June 22, 2013. • Time: 4:30 a.m. until noon.

TABLE 2 TO § 165.151—Continued

	• Location: All navigable waters of Stamford Harbor within a half miles long and 1000 foot wide polygon shaped box stretching from Dolphin Cove to Rocky Point between Stamford and Greenwich, CT. Formed by connecting the following points. Beginning at point (A) 41°01′32.03″ N, 073°33′8.93″ W, then south east to point (B) 41°01′15.01″ N, 073°32′55.58″ W, then south west to point (c) 41°00′49.25 N, 073°33′20.36″ W, then north west to point (D) 41°00′58.00″ N, 073°33′27.00″ W, then north east to point (E) 41°01′15.80″ N, 073°33′09.85″ W, then heading north and ending at point (A) (NAD 83).

These regulations were published in the **Federal Register** on May 24, 2013 (78 FR 31402).

Under the provisions of 33 CFR 165.151, the fireworks displays and swim events listed above are established as safety zones. During these enforcement periods, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless they receive permission from the COTP or designated representative.

This notice is issued under authority of 33 CFR 165.151 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the COTP determines that a regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 17, 2013.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2013–15238 Filed 6–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2013–0433]

Safety Zone; Fourth of July Fireworks Display, Glenbrook NV

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Fourth of July Fireworks Display in Glenbrook, NV during the date and time noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in event 19 of Table 1 to 33 CFR 165.1191 will be enforced from 5 a.m. until 10:30 p.m. on July 4, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Joshua Dykman, Sector San Francisco Waterways Safety Division, U.S. Coast Guard; telephone 415–399–3585, email *D11-PF-MarineEvents@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone in navigable waters around and under a fireworks barge within a radius of 100 feet during the loading of the fireworks barge and until the start of the fireworks display. From 5 a.m. until 4 p.m. on July 4, 2013, the fireworks barge will be loaded at the launch site in Glenbrook Bay near position 39°05′18″ N, 119°56′34″ W (NAD 83). Upon the commencement of the 20 minute fireworks display, scheduled to take place at 9:30 p.m. on July 4, 2013, the safety zone will increase in size to encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet at position 39°05′18″ N, 119°56′34″ W (NAD 83) for the Fourth of July Fireworks Display in Glenbrook, NV in 33 CFR 165.1191. This safety zone will be in effect from 5 a.m. until 10:30 p.m. on July 4, 2013.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 4, 2013.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2013–15308 Filed 6–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0078]

RIN 1625–AA00

Safety Zones; Annual Independence Day Fireworks Displays, Skagway, Haines, and Wrangell, AK

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing the following three permanent safety zones on the navigable waters of Taiya Inlet in the vicinity of on the White Pass and Yukon Railway Dock, Skagway; Portage Cove, Haines and; Wrangell Harbor, Wrangell, Alaska. These safety zones are necessary to protect spectators and vessels from the hazards associated with the annual

Independence Day Fireworks Displays held in each location. This rule is intended to restrict all vessels from a portion of the navigable waters in the immediate vicinity of the fireworks launch platforms, before, during and immediately after the fireworks event.

DATES: This rule is effective July 26, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0078. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Patrick Drayer, Waterways Management Division, U.S. Coast Guard Sector Juneau, telephone 907–463–2465, email *Patrick.A.Drayer@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard published an NPRM for this rule in the **Federal Register** on Monday, April 1, 2013 (78 FR 19431). No comments were received on this docket and there were no requests for public meetings.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The cities of Skagway, Haines, and Wrangell, Alaska hold fireworks displays on or about the July 4th of each year to celebrate Independence Day. The fireworks will be launched from a barge or waterfront facility. This rule is necessary to ensure the safety of spectators and vessels from hazards associated with fireworks. Fireworks launched in close proximity to watercraft pose a significant risk to public safety and property. Such displays draw large numbers of spectators on vessels. The combination of a large number of spectators, congested waterways, darkness punctuated by bright flashes of light, and burning debris has the potential to result in serious injuries or fatalities. The safety zones will restrict vessels from operating within a portion of the navigable waters around the fireworks launch platforms during the enforcement period which will be immediately before, during, and immediately after the fireworks displays.

C. Discussion of Comments, Changes and the Final Rule

No comments were received during the comment period and thus there were no changes.

The Coast Guard is establishing three permanent safety zones on the navigable waters of Taiya Inlet, Skagway; Portage Cove, Haines; and Wrangell Harbor, Wrangell, AK. The safety zones are necessary to ensure the safety of spectators and vessels from hazards associated with fireworks displays. Each safety zone will include the navigable waters within a 300-yard radius around the fireworks launch platform. The fireworks displays are expected to occur between 11 p.m. and 11:45 p.m. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, these zones will be enforced from 10 p.m. until 2:30 a.m. This effective period of the safety zones is to account for the possibility that if the fireworks displays are postponed because of inclement weather, we would be able to adjust the enforcement period of the safety zones. The specific date and duration of the enforcement period will be announced in the Local Notices to Mariners and maritime advisories widely available to mariners.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the COTP or the designated representative. Before activating the zones we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard's enforcement of these safety zones will be of short duration, approximately three hours. Furthermore, vessels may be authorized to transit through the safety zones with the permission of the COTP.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit, anchor, or fish in a portion of the navigable waters of Taiya Inlet, Skagway; Portage Cove, Haines; and Wrangell Harbor, Wrangell, Alaska; during the periods of enforcement of these safety zones.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. These safety zones would be subject to enforcement only immediately before, during, and immediately after the firework displays that may occur from July 3 at 10 p.m. ADT until 2:30 a.m. ADT on July 5 each year. Vessel traffic could pass safely around the safety zones. Before the enforcement of any of the safety zones,

we would issue maritime advisories widely available to users of the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of three permanent safety zones on the navigable waters of Taiya Inlet, Skagway; Portage Cove, Haines; and Wrangell Harbor, Wrangell, AK, respectively. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1712 to read as follows:

§ 165.1712 Safety Zones; Annual Independence Day Firework Displays, Skagway, Haines, and Wrangell, AK.

(a) *Regulated areas.* The following areas are permanent safety zones:

(1) All navigable waters of Taiya Inlet within a 300-yard radius of the fireworks launching point located on the White Pass and Yukon Railway Dock at approximate position 59°26.70′ N, 135°19.58′ W in the vicinity of the mouth of the Small Boat Harbor, Skagway, Alaska;

(2) All navigable waters of Portage Cove, Haines, AK within a 300-yard radius around the fireworks launch area, centered at approximate position 59°14′16.72″ N, 135°25′35.79″ W; (3) all navigable waters of Wrangell Harbor within a 300-yard radius of the fireworks launch platform centered at approximate position 56°28.223′ N and 132°23.285′ W.

(b) *Effective date.* This rule is effective from 10 p.m. until 2:30 a.m., July 3 through July 5, of each year.

(c) *Definitions.* The following definitions apply to this section:

Designated Representative—a ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, to act on his or her behalf.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zones without the permission of the COTP or the designated representative.

(3) Vessel operators desiring to enter or operate within any of the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 907–463–2990 (Sector Juneau command center) to obtain permission to do so.

Dated: June 1, 2013.

S.W. Bornemann,

Captain, U.S. Coast Guard, Captain of the Port Southeast Alaska.

[FR Doc. 2013–15310 Filed 6–25–13; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Refunds and Exchanges

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 604.9 and other DMM sections to remove obsolete standards pertaining to postage refunds and stamp exchanges, and to standardize processes for requesting refunds for PC Postage® labels and extra service refunds.

DATES: *Effective date:* July 28, 2013.

FOR FURTHER INFORMATION CONTACT: Vicki Bosch, Business Mailers Support, *vicki.m.bosch@usps.gov,* 202–268–4978; Douglas Germer, Revenue/Field Accounting, *douglas.g.germer@usps.gov,* 202–268–8522; Hank Heren, Payment Technology, *hank.g.heren@usps.gov,* 309–671–8926; Karen Key, Shipping Products, *karen.f.key@usps.gov,* 202–268–2282; Suzanne Newman, Product Classification, *suzanne.j.newman@usps.gov,* 202–268–5581.

SUPPLEMENTARY INFORMATION: The Postal Service published a notice of proposed rulemaking on March 14, 2013 (78 FR 16213), which included a 30 day comment period. After review of the comments and further consideration, the Postal Service provides this final rule.

A. Comments

The Postal Service received fourteen formal responses to our proposed rule as comments, four of which included comments about more than one issue. There were two responses by customers, nine by mailers, one by a postal employee; and two by mailer associations.

Changes To Refund Amount Assessments

Seven mailers and two mailer associations requested that the Postal Service withdraw or alter the proposed change to replace hourly assessments, used when granting specific postage refunds, with an assessment of not more than 90 percent of the face value of postage. This proposed change affected postage refunds for dated or undated, unused postage meter indicia; for stamps affixed to Business Reply Mail® (BRM) pieces; and for refunds requested under Special Postage Payment Systems under DMM 705 (which provides for refunds only under extenuating circumstances and where a mailer or third party provider is at fault, not the Postal Service). The commenters generally suggested that the Postal Service either retain the hourly administrative assessment and/or set a refund threshold amount for assessments at 90 percent of the face value. One mailer and one mailer association suggested a mailer/USPS® task team be established to determine the changes to these postage refund assessments. Two commenters provided similar examples of a recent mailer refund request assessed at an hourly administrative cost compared to an assessment at the face value of the amount of postage to demonstrate that the charges under the proposed rule would be excessive. The example describes a *PostalOne!®* reversal due to a mailer's incorrect postage statement; the proposed rule would not have altered the charges assessed in that instance. One mailer association questioned whether the proposed rule applied to postage withdrawals from a permit imprint advance deposit account. The proposed rule made no mention of revising the current process for withdrawals from permit imprint advance deposit accounts. As a result of these comments in general, the Postal Service will publish a revised **Federal Register** notice-proposed rule addressing this particular subject.

Refunds for Adhesive Stamps in Connection With Authorized Marketing Programs

One commenter requested the Postal Service continue to provide refunds for adhesive stamps affixed to un-mailed matter in connection with an authorized marketing program. Under current standards for the exchange of stamps affixed to commercial envelope and cards, customers would not be adversely affected by removing the reference to (USPS) authorized marketing programs. Therefore, the Postal Service will remove the unnecessary references to an authorized marketing program from the DMM.

Establishing a Minimum Threshold for VAR Refunds

One commenter disagreed with the Postal Service proposing a minimum threshold of $50.00 for Value Added Refunds (VAR) and also commented that the overall concept was understandable. The commenter recommended a $25.00 minimum threshold and suggested that the Postal Service require VAR refunds to be made by Electronic Funds Transfer (EFT) in an effort to reduce the manual costs of processing VARs. Since the majority of VAR refunds are done by EFT today, requiring VARs only through EFT may not serve to eliminate or significantly reduce the current costs to process the VAR. Therefore, based on a need to cover actual costs and improve efficiencies in this area, the Postal Service is establishing a minimum threshold of $50.00 for VARs as part of this final rule.

Refunds and Exchanges of Damaged or Unused Stamps or Stamped Matter

One commenter voiced his displeasure with the following four DMM revisions pertaining to the proposed rule:

- The commenter disagreed with the Postal Service's proposal to extend the same provision to exchanging unusable stamped paper as provided for unusable stamps when spoiled in the customer's possession; which must be those items on sale within 12 months before the transaction. Rather than continue to treat customers with similar types of exchanges differently, the Postal Service will align the exchange of similar types of postage-related items under the same established principle; exchange is limited to items on sale within 12 months before the transaction.
- The commenter indicated the provision allowing the redemption of unusable aerogrammes spoiled in the customer's possession appears to be

omitted from the proposed rule. This change was included in the proposed rule in general as an obsolete standard. Aerogrammes have not been available for purchase since 2007. Additionally, the proposed rule to revise stamped matter presented for exchange to those items on sale within the last 12 months would eliminate the ability to redeem aerogrammes. Based on these facts and the final rules in this notice, the Postal Service is removing the option to redeem aerogrammes from mailing standards. Customers are reminded that previously purchased aerogrammes are currently mailable at the applicable First-Class Mail International letter-size price.

• The commenter states that the explanation of the proposed rule refers to the use of the Special Delivery stamp and that individuals who have purchased Special Delivery stamps should be able to use them for any purpose now that the Postal Service has eliminated that service. The customer compares this to his opinion that this is unfair to not allow the use of the Special Delivery stamp as it should be the same as being able to use the 15-cent Certified Mail stamp, issued in 1955, as postage. Special Delivery stamps have not been available for purchase since 2007 and based on current standards, neither the Certified Mail® stamp nor the Special Delivery stamp are allowed to be used as postage. As a result, the obsolete references to Special Delivery service will be removed from the DMM as part of this final rule.

• The commenter states that the redemption permitting conversion of postage stamps to a deposit to a permit imprint account was being eliminated without the Postal Service stating the reason for this change. The proposed rule served to remove obsolete standards from the DMM in general, as indicated in the preamble. The use of this option has declined steadily over the years and is now rarely or never used, and no other comments from any customer claiming to use this option were received. Therefore, this final rule removes the option for conversion of postage stamps to a deposit to a permit imprint account.

Clarifications

Four comments included requests for further clarification on the limits of $100.00 for stamp exchanges for ''each such transaction''. This final rule revises the DMM language to provide clarity and define ''each such transaction'' under the $100.00 exchange limit.

One commenter expressed concern whether the proposed rules aligning the refund standards for PC Postage with the standards for meter indicia refunds would adversely affect the retail acceptance offices processing these refund requests. There was no mention in the proposed rule that would change the processing of PC Postage refunds requests from the vendors to USPS Retail units.

One commenter requested clarification on whether the proposed rule was actually eliminating their ''current practice'' of cutting unused postage stamps from envelopes and affixing them to sheets of paper for refund. The standards mentioned were merely being relocated, not being revised. Furthermore, customers are advised that current standards prohibit refunds being made for unused stamps cut from envelopes (and affixing them to paper), therefore, this practice should be discontinued immediately.

Although no comments were received to the proposal to include language in the DMM, consistent with existing delivery record retention periods, for those refund requests for extra services not rendered, the Postal Service plans to publish a revised **Federal Register** notice in the nearby future which will include more comprehensive information in this regard.

B. Summary of Changes To Be Implemented

Technological advances have facilitated expansion of authorized postage payment methods and for requesting postage refunds. As a result, certain manual refund processes have become unnecessary and inefficient. Additionally, as new postage payment methods options were adopted, some refund and appeals time periods were inadvertently omitted. These revisions will serve to correct earlier changes, provide clarity, and remove obsolete standards from the DMM as follows:

Permit holders may request a credit to an advanced deposit account for postage stamps affixed to BRM pieces, and for annual presort mailing fees paid but never used. A direct postage refund may be requested for postage affixed to BRM only if an advance deposit account is not used or is unavailable.

Clarifications are being made that meter postage refunds are not given for a decertified meter or for a meter which is reported lost by the provider and recovered after 365 days.

As a result of removing obsolete stamp conversion standards as part of this final rule (i.e. converting stamps to other postage forms; references to the former Special Delivery service; and to providing refunds for adhesive stamps affixed to unmailed matter in connection with an authorized marketing program) only exchanges of Semipostal stamps will be permitted.

Additional language will be included in our standards for extra service refunds to clarify that proof of receipt by the Postal Service must be included with the refund request, regardless of the postage payment method used. Proof of acceptance can be valid USPS acceptance/mail processing scans, a USPS postmarked (round-dated) mailing receipt or a retail Post Office mailing receipt.

Prior to the availability of electronic scanning data, signatures were routinely captured for mailpieces being returned to the sender as undeliverable. Additionally, mailpieces with extra services, including those that may not include indemnity, such as Certified Mail® and Signature Confirmation™, are designed to capture the signature of the recipient indicated by the sender as the addressee on the mailpiece. This final rule will clarify that if the sender or the sender's agent is not available to sign for returned, undeliverable Certified Mail, return receipt for merchandise, and Signature Confirmation items, capturing the sender's signature is not required. Return to sender scans will still be provided in these cases. Customers are reminded that postage refunds for services not rendered are not provided when a signature of the sender is not captured when the piece has been properly returned to sender with reason for non-delivery.

Duplicate references to when Express Mail® refunds are not given, as provided in DMM 114.2.0, 214.3.0, 314.3.0, and 414.3.0, along with other related refund standards, will be relocated to the existing DMM section for Express Mail Postage Refunds (605.9.5).

Data shows that the administrative costs, associated to both the mailer and the Postal Service, to provide a Value Added Refund (VAR) will generally exceed $50.00 making such requests a negative return on investment. Therefore, a minimum refund amount of $50.00 per mailing is established in the file rule for VARs.

The Postal Service provides customers with an appeal process for *unfavorable rulings* on postage refund requests made to an authorized PC Postage provider. These appeals require a manual, detailed review of the denial that was not previously accounted for in refunds standards. Therefore, the refund standards for PC Postage appeals are being aligned under the same established principles as for meter indicia refunds, which take a similar amount of manual steps to review and adjudicate. Therefore, if an appeal to an

unfavorable ruling on a refund request for PC Postage indicia results in a refund being granted, the refund amount would not exceed 90 percent of the face value of the indicia. Customers are also reminded that, except in the event of a service failure on a guaranteed product or extra service, refund requests for postage purchased through an authorized PC Postage provider must be made directly through that provider. Only appeals to an *adverse ruling* on such requests made by a provider within the allotted refund period may be directed to the Postal Service through the manager, Payment Technology, USPS Headquarters. Subsequently, as part of this final rule, the Postal Service will expand the refund period for customers to request postage refunds through their provider for PC Postage indicia containing a valid Postal Identification Code (PIC) from 10 days to 30 days. This is being done in an effort to give customers additional time to reconcile their shipping records and to help reduce the amount of requests for appeals being received beyond the current 10 day refund filing period.

As a result of these revisions, PS Form 3533, *Application for Refund of Fees,* will be revised to reflect the changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated in the preamble, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED.]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows.

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM):

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Priority Mail Express

113 Prices and Eligibility

* * * * *

2.0 Basic Eligibility Standards for Priority Mail Express

2.1 Definition

[Revise the first sentence of 2.1 and then add a new second sentence as follows:]

Priority Mail Express is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below. Refunds standards for domestic Priority Mail Express Next Day and Second Day Delivery are provided in 604.9.5. * * *

* * * * *

4.0 Service Features of Priority Mail Express

* * * * *

4.2 Priority Mail Express Next Day Delivery

* * * * *

[Delete 4.2.6 Refunds in its entirety.]

* * * * *

4.3 Priority Mail Express Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

* * * * *

4.4 Priority Mail Express Military Service (PMEMS)

4.4.1 Objectives

[Replace the third sentence of 4.4.1 as follows:]

* * * For PMEMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

114 Postage Payment Methods

* * * * *

[Delete 2.0, Postage Refunds, in its entirety.]

* * * * *

200 Commercial Letters and Cards

* * * * *

210 Priority Mail Express

213 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail Express

3.1 Definition

[Revise the first sentence of 3.1 then add a new second sentence as follows:]

Priority Mail Express is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below. Refunds standards for domestic Priority Mail Express are provided in 604.9.5. * * *

* * * * *

4.0 Service Features of Priority Mail Express

* * * * *

4.2 Priority Mail Express Next Day Delivery

* * * * *

[Delete 4.2.5 Refunds in its entirety.]

* * * * *

4.3 Priority Mail Express Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

4.4 Priority Mail Express Custom Designed

[Delete 4.4.8 Refunds]

* * * * *

4.5 Priority Mail Express Military Service (PMEMS)

4.5.1 Objectives

[Replace the third sentence of 4.5.1 as follows:]

* * * For PMEMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

214 Postage Payment and Documentation

* * * * *

[Delete 3.0, Postage Refunds, in its entirety.]

* * * * *

300 Commercial Flats

* * * * *

310 Priority Mail Express

313 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail Express

3.1 Definition

[Revise the first sentence of 3.1 and then insert a new second sentence as follows:]

Priority Mail Express is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below.

Refunds standards for domestic Priority Mail Express are provided in 604.9.5.* * *

* * * * *

4.0 Service Features of Priority Mail Express

* * * * *

4.2 Priority Mail Express Next Day Delivery

* * * * *

[Delete 4.2.5 Refunds in its entirety.]

4.3 Priority Mail Express Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

4.4 Priority Mail Express Custom Design

* * * * *

[Delete 4.4.8 Refunds in its entirety.]

4.5 Priority Mail Express Military Service (PMEMS)

4.5.1 Objectives

[Replace the third sentence of 4.5.1 as follows:]

* * * For PMEMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

314 Postage Payment and Documentation

* * * * *

[Delete 3.0, Postage Refunds, in its entirety.]

* * * * *

400 Commercial Parcels

* * * * *

410 Priority Mail Express

413 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail Express

3.1 Definition

[Revise the first sentence of 3.1 and then insert a new second sentence as follows:]

Priority Mail Express is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below. Refunds standards for domestic Priority Mail Express are provided in 604.9.5.* * *

* * * * *

4.0 Service Features of Priority Mail Express

* * * * *

4.2 Priority Mail Express Next Day Delivery

* * * * *

[Delete 4.2.5 Refunds in its entirety.]

* * * * *

4.3 Priority Mail Express Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

* * * * *

4.4 Priority Mail Express Custom Designed

[Delete 4.4.9 Refunds]

4.5 Priority Mail Express Military Service (PMEMS)

4.5.1 Objectives

[Replace the third sentence of 4.5.1 as follows:]

* * * For PMEMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

414 Postage Payment and Documentation

* * * * *

[Delete 3.0, Postage Refunds, in its entirety.]

* * * * *

500 Additional Mailing Services

* * * * *

505 Return Services

1.0 Business Reply Mail (BRM)

* * * * *

1.6 Postage, Per Piece Fees, and Account Maintenance Fees

* * * * *

1.6.6 With Postage Affixed

[Revise the fourth sentence of 1.6.6 as follows:]

* * * The permit holder may request a credit to the advance deposit account for postage affixed to BRM. A refund may be requested under 604.9.2 for postage affixed to BRM only if an advance deposit is not used.

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

* * * * *

1.8 Returning Mail

1.8.5 Extra Services

[Revise 1.8.5 by revising the text of the fourth sentence and adding a new fifth sentence as follows:]

* * * The sender must sign a delivery receipt for returned Priority Mail Express and for Registered Mail, COD articles, mail insured for more than $200, and any mail sent with return receipt for merchandise service. Returned Priority Mail Express (when waiver of signature is requested by sender), Certified Mail, and mail with Signature Confirmation, or return receipt for merchandise service may be returned to the sender without obtaining a signature when those mailpieces are properly returned to sender as undeliverable.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.7 Authorization to Produce and Distribute Postage Evidencing Systems

[Revise the second sentence of 4.7 as follows:]

* * * Additional information may be obtained from the manager, Payment Technology (see 608.8.1 for address).

* * * * *

[Revise the title of 9.0 as follows:]

9.0 Exchanges and Refunds

* * * * *

9.1 Stamp Exchanges

[Revise the title and text of 9.1.2 as follows:]

9.1.2 Unusable, Damaged Stamps or Stamped Paper

Stamps, including stamped paper (cards and envelopes), that are damaged or otherwise unusable for postage (because of humidity, moisture, or other causes) while in a customer's possession may be exchanged only for an equal number of stamps, or stamped paper, alike and of the same denomination. Unusable stamps, including stamped paper, accepted from a customer must be those on sale at Post Offices within 12 months before the transaction. Quantities of the same denomination totaling over $10 (i.e., sheets, coils, booklets) must be returned in the same configuration as when bought. Except as provided in item e, each such transaction is limited to $100 worth of postage from each customer. These additional conditions apply to exchanges of damaged or unusable stamps or stamped paper:

a. Only the buyer may exchange stamped paper with a printed return address or other matter printed by the buyer.

b. Stamped envelopes (mutilated no more than is necessary to remove contents): Postage value plus value of any added postage due to a price increase or for additional service.

c. Unmutilated single and double stamped cards: 85% of postage value, plus full value of postage added. Unused double stamped cards printed for reply should not be separated but, if they are separated in error and the buyer presents both halves, the cards may be

redeemed. Reply halves of double stamped cards returned to sender outside of the mail are not redeemable by the original buyer, even though the reply half received no postal service.

d. Stamps affixed to commercial envelopes and postcards: 90% of postage value. Envelopes and postcards must be in substantially whole condition and in lots of at least 50 of the same denomination and value.

e. Unused precanceled stamps in full coils and in full sheets redeemed from precanceled permit holders: 90% of postage value.

* * * * *

[Renumber current 9.1.4 as new 9.1.8.]

[Renumber current 9.1.5 as new 9.1.4.]

[Add new 9.1.5 (renumbered from current 9.2.8) and revise the text as follows:]

9.1.5 Semipostal Stamps

Customers may exchange semipostal stamps for their postage value (i.e., the price of the stamps less the contribution amount) to the extent that exchange of postage stamps is permitted. The postage the customer exchanges is equal to the First-Class Mail single-piece one-ounce letter price in effect at the time of exchange. However, if the customer provides a receipt showing the date of purchase, the postage exchanged is equal to the postage price in effect at the time of purchase. The contribution amount is not refundable and is not included in the exchange value.

[Delete 9.1.6, Exchange of Spoiled and Unused Postal Matter, in its entirety.]

[Delete current 9.1.7, Stamps Converted to Other Postage Forms, in its entirety.]

[Renumber current 9.1.8 as new 9.1.7 and revise the introductory text of renumbered 9.1.6 as follows:]

9.1.6 Not Exchangeable

The following postage items cannot be exchanged:

[Revise the text of renumbered 9.1.6 item a. as follows:]

a. Adhesive stamps, unless mistakes were made in buying (9.1.4), stamps were defective, stamps are affixed to commercial envelopes and postcards, or under 9.1.2.

* * * * *

[Revise the title of renumbered 9.1.8 as follows:]

9.1.8 Appeal of Denied Exchange

* * * * *

9.2 Postage and Fee Refunds

[Revise the title of 9.2.1 as follows:]

9.2.1 General Standards

A refund of postage and fees may be made:

* * * * *

[Revise item 9.2.1b by deleting the second sentence and revising the text of the first sentence as follows:]

Under 9.3 for postage evidencing systems refund requests (4.0), which includes postage meters and PC Postage products. * * *

[Revise item 9.2.1c as follows:]

c. Under 9.4 for Value Added Refund (VAR) requests made at the time of mailing.

[Delete item 9.2.1e (relocated as part of renumbered 9.2.3 item m).]

[Delete current 9.2.3, Torn or Defaced Mail, in its entirety (relocated as part of renumbered 9.2.3, item l).]

[Renumber current 9.2.4 through 9.2.7 as new 9.2.3 through 9.2.6.]

9.2.3 Full Refund

A full (100%) refund or credit may be made when:

* * * * *

[Delete redesignated item 9.2.3e and redesignate items 9.2.3f through 9.2.3l as new items 9.2.3e through 9.2.3k.]

[Revise renumbered item h by adding a new second sentence as follows:]

h. * * * The permit holder should request a credit to its advance deposit account, unless an advance deposit account is not used or is unavailable and a refund is requested.

[Add new items 9.2.3l and 9.2.3m as follows:]

l. If a First-Class Mail, First-Class Package Service, Standard Post or Package Services mailpiece is torn or defaced during USPS handling so that the addressee or intended delivery point cannot be identified. Where possible, the damaged item is returned with the postage refund.

m. Under the terms of a contract between a contract postal unit (CPU) and the USPS for unused postage printed by the CPU.

[Revise the title of 9.2.4 as follows:]

9.2.4 Postage Refunds Not Available

* * * No refunds may be made for the following:

* * * * *

[Revise renumbered 9.2.4c as follows:

c. Unused adhesive stamps (may be exchanged under 9.1, *Stamp Exchanges*).

[Revise renumbered item 9.2.4e as follows:]

e. Unused Priority Mail Forever Prepaid Flat Rate packaging. Only same packaging exchanges may be made directly through the Express and Priority Mail Supply Center (EPMSC) by calling 800–610–8734. Exchanges are only authorized when the unused packaging, purchased by credit card from *http://www.usps.com/,* arrives in damaged condition.

[Add new items 9.2.4f, 9.2.4g and 9.2.4h as follows:]

f. For postage (and/or fees for extra services not rendered) when a postmarked (round-dated) mailing receipt, retail Post Office mailing receipt or valid USPS acceptance/mail processing scan events are not available.

g. For extra service fees for services that include obtaining addressee signatures, except Signature Confirmation, when a refund is requested less than 10 days, or more than 18 months, from the date that the service was purchased.

h. For extra service fees, when the service could not be provided and the mailpieces are properly returned to sender as undeliverable. For Signature Confirmation fees when a refund is requested less than 10 days, or more than 10 months, from the date that the service was purchased.

9.2.5 Applying for Refund

[Revise the text of renumbered 9.2.5 as follows:]

For refunds under 9.2, the customer must apply for a refund on Form 3533; submit it to the postmaster; and provide the envelope, wrapper (or a part of it) showing the names and addresses of the sender and addressee, canceled postage and postal markings, or other evidence of postage and fees paid. The local postmaster grants or denies refund requests under 9.2. If the request is granted, the amount refunded may not exceed 90% of the indicia's face value when the total face value of the indicia is $350 or less. When the total face value of the indicia is more than $350, the amount refunded is the total face value reduced by $35 per hour for the USPS time to process the refund, with a minimum charge of $35. The charge is $35 for each hour spent, with the last fraction of an hour treated as a full hour. For example, if the time to process the refund is 2 hours and 12 minutes, the charge is $35 for 3 hours ($105), which is deducted from the total face value of the indicia. USPS may process the refund payment via a no-fee postal money order for amounts up to $500.

Payment processing is through Accounting Service Center. Adverse rulings may be appealed through the postmaster to the manager, Pricing and Classification

Service Center (see 608.8.0), who issues the final agency decision. Refunds for postage evidencing systems postage are submitted under 9.3.

[Delete renumbered 9.2.6.]

[Renumber current 9.2.9 as new 9.2.6 and revise the title and text as follows:]

9.2.6 Postage Affixed to Business Reply Mail

A business reply mail (BRM) permit holder may request a credit to an advance deposit account for postage affixed to returned BRM pieces. A refund may be requested for postage affixed to BRM only if an advance deposit is not used or is unavailable. Only the value of the postage affixed may be credited or refunded. Refunds are not given for foreign postage affixed to BRM. The permit holder must submit a completed Form 3533 to the postmaster documenting the excess postage payment for which a credit or refund is desired. The permit holder also must present properly faced and banded bundles of 100 (when quantities allow) identical BRM pieces with identical amounts of postage affixed. A charge of $35.00 per hour, or fraction thereof, is assessed for the workhours used to process the credit or refund. Credits or refunds are not given for any BRM or QBRM per piece charges, annual accounting fees, quarterly fees, or monthly maintenance fees.

* * * * *

[Revise the title of 9.3 as follows:]

9.3 Refunds for Postage Evidencing Systems

[Renumber current 9.3.1 as new 9.3.7.]

[Add new item 9.3.1 as follows:]

9.3.1 Description

Postage meters and PC Postage products are collectively identified as postage evidencing systems. A postage evidencing system is a device or system of components a customer uses to print evidence that required postage has been paid. Refunds for postage and fees when payment is made by postage evidencing system indicia are granted as applicable in 9.3.2 through 9.3.12 and as follows:

a. Refund requests must include the entire envelope or wrapper or a sufficient portion of the container showing the indicia must be included to validate that the item was never deposited with the USPS. Unused metered postage must not be removed from the mailpiece (including unmailed meter reply mail).

b. Indicia printed on labels or tapes not adhered to wrappers or envelopes must be submitted loose and must not be stapled together or attached to any paper or other medium. Self-adhesive labels printed without a backing may be submitted on a plain sheet of paper.

c. If a part of one indicium is printed on one envelope or card and the remaining part on one or others, the envelopes or cards must be fastened together to show that they represent one indicium.

d. Refunds are allowable for indicia on metered reply envelopes only when it is obvious that an incorrect amount of postage was printed on them.

[Revise the title and text of 9.3.2 as follows:]

9.3.2 General Standards for Metered Indicia Refunds

Unused metered indicia are postage amounts (which may include fees) already imprinted onto any mailpiece, shipping label or meter strip (stamp) that was never mailed. Such meter indicia are considered for refund only if complete, legible, and valid. Authorized users must submit requests within 60 days of the date(s) shown in the indicia. Requests must include proof (such as a copy of the lease or contract) that the person or entity requesting the refund is the authorized user of the postage meter that printed the indicia. See 9.3.3 for additional standards applicable to dated, unused metered indicia and 9.3.4 for additional standards applicable to undated, unused metered indicia. For both types of unused metered indicia, submit refund requests as follows:

a. The items with unused postage must be sorted by meter used and then by postage value shown in the indicia, and must be properly faced and bundled in groups of 100 identical items when quantities allow.

b. Submit a refund request with a separate Form 3533 for each meter for which a refund is requested. Complete all identifying information and sections of the form. Charges for processing a refund request for unused, dated meter indicia are as follows, depending on the total face value of the indicia:

1. When the total face value of the indicia is $350 or less, the amount refunded is 90% of the face value. USPS may process the refund payment via a no-fee postal money order; or

2. When the total face value of the indicia is more than $350, the amount refunded is the total face value reduced by $35 per hour for the USPS time to process the refund, with a minimum charge of $35. The charge is $35 for each hour spent, with the last fraction of an hour treated as a full hour. For example, if the time to process the refund is 2 hours and 12 minutes, the charge is $35 for 3 hours ($105), which is deducted from the total face value of the indicia. USPS may process the refund payment via a no-fee postal money order for amounts up to $500. Payment processing for refunds of $500.01 or more is through the Accounting Service Center.

c. If a request is denied, the authorized user may appeal within 30 days of the ruling to the Manager, Pricing and Classification Center (see 608.8.0), who issues the final agency decision. The original meter indicia must be submitted with the appeal.

[Renumber current 9.3.3 as new 9.3.10.]

[Add new 9.3.3 as follows:]

9.3.3 Dated, Unused Meter Indicia

Refund requests for dated, unused meter indicia must be submitted to the local Post Office, under 9.3.1 and 9.3.2. The request is processed by the local Postmaster, who grants or denies the refund.

[Revise the title and text of 9.3.4 as follows:]

9.3.4 Undated, Unused Meter Indicia

Authorized users, or the commercial entity that prepared the mailing for the authorized user, must submit refund requests for undated, unused meter indicia under 9.3.1 and as follows:

a. The request must include a letter signed by the authorized user, or by the commercial entity that prepared the mailing, explaining why the mailpieces were not mailed.

b. The minimum quantity of unused, undated metered postage that may be submitted for refund is 500 pieces from a single mailing or indicia with a total postage value of at least $500 from a single mailing.

c. Supporting documentation must be submitted to validate the date. Examples of supporting documentation include the job order from the customer, production records, the USPS qualification report, spoilage report, and reorders created report, as well as customer billing records, postage statements, and a sample mailpiece.

d. The request must be submitted (with the items bearing unused postage and the documentation) to the manager, business mail entry at the USPS district overseeing the mailer's local Post Office, or to a designee authorized in writing. The manager or designee approves or denies the refund request.

[Renumber current 9.3.5 as new 9.3.9.]

[Renumber current 9.3.6 as new 9.3.5.]

9.3.5 Ineligible Metered Postage Items

The following metered postage items are ineligible for refunds:

[Revise renumbered item 9.3.5a as follows:]

a. Meter reply pieces unless an incorrect postage price was printed.

* * * * *

[Revise renumbered item 9.3.5c as follows:]

c. Loose indicia printed on labels or tape that have been stapled together or attached to paper or other medium, except under 9.3.2c.

[Revise renumbered item 9.3.5e as follows:]

e. Indicia printed on mail returned to sender as undeliverable as addressed.

[Delete current 9.3.7, Refunds for Metered Postage, in its entirety and renumber current 9.3.8 as new 9.3.6.]

9.3.6 Rounding Numerical Values

[Revise the text of renumbered 9.3.6 as follows:]

Any fraction of a cent in the total to be refunded is rounded down to the whole cent. Any such rounding is unrelated to calculating a 90% maximum.

[Revise the title and text of renumbered 9.3.7 as follows:]

9.3.7 Unused Postage Value in Meter

The unused postage value remaining in a meter system when withdrawn from service may be refunded, depending upon the circumstance and the ability of the USPS to make a responsible determination of the actual or approximate amount of the unused postage value. When postage meters are withdrawn because of faulty operation, a final postage adjustment or refund will be withheld pending the system provider's report of the cause. Once provided, the USPS will make the determination of whether a refund is warranted and any refund amount, if applicable. When a meter damaged by fire, flood, or similar disaster is returned to the provider, postage may be refunded or transferred when the registers are legible and accurate, or the register values can be reconstructed by the provider based on adequate supporting documentation. When the damaged meter is not available for return, postage may be refunded or transferred only if the provider can accurately determine the remaining postage value based on adequate supporting documentation. The authorized user may be required to provide a statement as to the cause of the damage and the absence of any reimbursement by insurance or otherwise, and that the authorized user will not also seek such reimbursement. No refund is given for faulty operation caused by the authorized user, for a decertified meter, or if a meter is reported lost by the provider and recovered after 365 days. Refunds for unused postage value in meter systems are provided as follows:

a. Authorized users must notify their provider to withdraw the meter and to refund any unused postage value remaining on it.

b. The meter must be examined to verify the amount before any funds are cleared from the meter. Based on what is found, a refund or credit may be initiated for unused postage value, or additional money owing for postage value used.

c. The provider forwards the refund request to the USPS for payment or credit to the authorized user's mailing account.

d. The USPS will not issue individual customer refunds for unused postage value less than $25.00 remaining in a meter.

[Add new 9.3.8 as follows:]

9.3.8 General Standards for PC Postage Indicia Refunds

Unused PC Postage indicia are considered for refund only if complete, legible, valid and documented pursuant to 9.3.1. See 9.3.9 for additional standards applicable to requests for undated unused PC Postage indicia and 9.3.10 and 9.3.11 for additional standards applicable to requests for refunds of dated unused PC Postage indicia. For all types of unused PC Postage indicia, submit refund requests as follows:

a. Only authorized PC Postage users may request a refund.

b. The PC Postage system provider grants or denies a request for a refund for PC Postage indicia using established USPS criteria.

c. If a request is denied, the authorized user may appeal within 30 days of the adverse ruling through the manager, Payment Technology, USPS Headquarters (see 608.8) who issues the final agency decision. Requests for appeal must include the physical submission of the original label. If the exact numerical value of postage paid is not displayed in the indicia, the customer must submit the corresponding transaction log. The customer's specific reason for requesting the appeal must be included. If the appeal to an unfavorable refund request ruling results in a refund being granted, the amount refunded may not exceed 90% of the indicia's face value.

[Revise the text of renumbered 9.3.9 as follows:]

9.3.9 Unused, Undated PC Postage Indicia

Refunds will not normally be provided for valid, undated, serialized PC Postage indicia containing commonly used postage values. If the authorized user believes extraordinary circumstances justify an exception, requests for such refunds must include a detailed explanation. Requests will be considered by the PC Postage system provider on a case by case basis and as provided in 9.3.1 and, 9.3.8.

[Revise the text of renumbered 9.3.10 as follows:]

9.3.10 Unused, Dated PC Postage Indicia With PIC

The refund request should reflect any package identification code (PIC). Requests for refund of international mail postage (domestic origin only) and fees may include valid PICs for any form of USPS Tracking, Signature Confirmation, or Priority Mail Express service, and include those PICs available through the Track & Confirm service on *usps.com.* Requests for refund of PC Postage indicia that contain a valid Postal Identification Code (PIC) are provided as follows:

a. Requests must be submitted by authorized users to their provider electronically in accordance with procedures available from their provider. Physical submission of labels to the provider is not permitted.

b. Requests must be initiated for within thirty (30) days of printing the indicia.

c. If a postage refund is granted, the original physical shipping label must be destroyed by the authorized user.

d. The provider may, at its discretion, charge for processing a refund request.

[Add new items 9.3.11 and 9.3.12 as follows:]

9.3.11 Unused, Dated PC Postage Indicia Without PIC

Requests for refund of dated, unused PC Postage indicia which do not have an associated PIC must be submitted as provided in 9.3.1 and as follows:

a. Must be physically submitted by authorized users to their provider, along with the items bearing the unused postage, in accordance with procedures available from their provider. Authorized users must submit the refund request within sixty (60) days of the date(s) shown in the indicia.

b. The provider may, at its discretion, charge for processing a refund request.

9.3.12 Unused Postage Value in PC Postage Systems

Authorized users must notify their PC Postage provider to withdraw a system and to refund any unused postage value remaining in that account. The provider refunds the unused postage value remaining in the user's system on behalf of the USPS. Individual customer

refunds are not issued for unused postage value less than $25.00 remaining in a PC Postage system.

[Revise the title of 9.4 as follows:]

9.4 Value Added Refunds

* * * * *

9.4.14 Criteria for Mailing

A mailing for which a VAR request is submitted must meet these criteria:

* * *

[Add a new item 9.4.14f as follows:]

f. Each mailing refund request must be for at least $50.00 in postage. Customers may not combine multiple postage statements on a single Form 3533 to reach the $50.00 minimum threshold.

* * * * *

9.5 Priority Mail Express Postage Refund

[Renumber current items 9.5.1 through 9.5.7 as new items 9.5.4 through 9.5.11.]

[Add new items 9.5.1 through 9.5.3 as follows:]

9.5.1 Priority Mail Express Next Day and Second Day Delivery

For Priority Mail Express Next Day and Second Day Delivery, the USPS refunds the postage for an item not available for customer pickup at destination or for which delivery to the addressee was not attempted, subject to the standards for this service, unless the delay was caused by one of the situations in 9.5.6.

9.5.2 Priority Mail Express Military Service (PMEMS)

For PMEMS, the USPS refunds postage for an item not available for customer pickup at the APO/FPO or DPO address or for which delivery to the addressee was not attempted domestically within the times specified by the standards for this service, unless the item was delayed by Customs; the item was destined for an APO/FPO or DPO that was closed on the intended day of delivery (delivery is attempted the next business day); or the delay was caused by one of the situations in 9.5.6.

9.5.3 Priority Mail Express Custom Designed

For Priority Mail Express Custom Designed, the USPS refunds the postage for an item not available for customer pickup at destination or not delivered to the addressee within 24 hours of mailing, unless the item was mailed under a service agreement that provides for delivery more than 24 hours after scheduled presentation at the point of origin or if the delay was caused by one of the situations in 9.5.6.

* * * * *

9.5.5 Conditions for Refund

[Revise the second sentence of newly renumbered 9.5.6 as follows:]

* * * Except as provided in 9.5.6, a mailer may file for a postage refund only if the item was not delivered, delivery was not attempted, or if the item was not made available for claim by the delivery date and time specified at the time of mailing.

* * * * *

9.5.6 Refunds Not Given

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or if the guaranteed service was not provided due to any of the circumstances as follows:

[Revise 9.5.6 by adding new items a. through i. as follows:]

a. The item was properly detained for law enforcement purposes (see Administrative Support Manual 274).

b. The item was delayed due to strike or work stoppage.

c. The item was delayed because of an incorrect ZIP Code or address; or forwarding or return service was provided after the item was made available for claim.

d. The shipment is available for delivery, but the addressee made a written request that the shipment be held for delayed delivery.

e. The shipment is undeliverable as addressed.

f. If authorized by USPS Headquarters, and the delay was caused by governmental action beyond the control of USPS or air carriers; war, insurrection, or civil disturbance; delay or cancellation of flights; projected or scheduled transportation delays; breakdown of a substantial portion of USPS transportation network resulting from events or factors outside the control of USPS; or acts of God.

g. The shipment contained live animals and was delivered or delivery was attempted within 3 days of the date of mailing.

h. The Priority Mail Express Next Day shipment was mailed December 22 through December 25 and was delivered or delivery was attempted within 2 business days of the date of mailing.

i. The postage refund was other than for loss, and the Priority Mail Express piece was destined to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, or the Federated States of Micronesia (see 608.2.4.1 for ZIP Codes).

* * * * *

We will publish an amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–15215 Filed 6–25–13; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2010–0279; FRL–9390–6]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 17 chemical substances which were the subject of premanufacture notices (PMNs). Fifteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action would require persons who intend to manufacture, or process any of these 17 chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective August 26, 2013.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0279, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; email address: *alwood.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use any of the 17 chemical substances contained in this final rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, or processors of the subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a final SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

II. Background

A. What action is the agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for 17 chemical substances which were the subject of PMNs. Fifteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. The final SNURs for these substances are based on and consistent with the provisions in the underlying consent order. The final SNURs designate as a significant new use manufacture (including import) or processing in the absence of the protective measures required in the corresponding consent order. The final SNURs for the 2 remaining substances are not subject to a consent order under TSCA section 5(e). In these two cases, EPA has determined in the final SNURs that these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance. This action requires persons who intend to manufacture, or process these chemical substances for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** issue of December 28, 2011 (76 FR 81447) (FRL–9326–2), EPA proposed SNURs for these seventeen chemical substances. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents proposing the SNURs. The record for the SNURs for these seventeen chemical substances was established in the docket under docket ID number EPA–HQ–OPPT–2010–0279. That docket includes information considered by the Agency in developing the proposed and final rules, including comments on those rules.

EPA received numerous comments on the proposed rule. A full discussion of EPA's response to these comments is included in Unit V. of this document. Based on these comments, EPA is issuing modified final rules for these chemical substances as described in Unit V. of this document.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the final rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Rationale and Objectives of the Final Rule

A. Rationale

During review of the PMNs submitted for these chemical substances, EPA concluded that for 15 of the 17 chemical substances, regulation was warranted under TSCA section 5(e)(1)(A)(ii)(I), pending the development of information sufficient to make reasoned evaluations of the human health effects of the chemical substances. Based on these findings, a TSCA section 5(e) consent order requiring the use of appropriate exposure controls was negotiated with

the PMN submitter. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent order. These final SNURs are issued pursuant to § 721.160. See the docket under docket ID number EPA–HQ–OPPT–2010–1075 for the corresponding consent orders.

In the other two cases, where the uses were not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met. For additional discussion of the rationale for the SNURs on these chemicals, see Units II. and V. of the proposed rule.

B. Objectives

EPA is issuing these final SNURs for specific chemical substances that have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this final rule:

- EPA will receive notice of any person's intent to manufacture, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, taking into consideration the four bulleted TSCA section 5(a)(2) factors listed in this unit.

V. Response to Comments on Proposed SNURs

Comment 1: One commenter stated that the practice of EPA negotiating consent orders with the PMN submitter first without public comment or input has limited the public's ability to use the comment process to change requirements for SNURs based on consent orders and has contributed to SNURs requiring personal protective equipment rather than following the industrial hygiene hierarchy of controls where personal protective equipment is the last option selected to control exposures.

EPA Response: EPA issues orders under section 5(e) of TSCA in response to PMNs submitted under Section 5(a) of TSCA. EPA can only negotiate consent orders with persons who submitted the PMN. Because the consent order only restricts the activities of the PMN submitter, EPA issues a SNUR to extend the same requirements to all manufacturers, and processors. SNURs are issued either using notice and comment rulemaking or as direct final rules. Regardless of which procedure is used, the public is permitted an opportunity to comment. In accordance with the procedural rules for promulgating SNURs based on section 5(e) orders (see 40 CFR 721.160(b)), such SNURs are generally based on and consistent with the underlying section 5(e) consent order. However, EPA may also designate additional activities as significant new uses (SNUs). These additional SNUs may be in response to public comment. For an example, see the response to Comment 14.

Comment 2: A commenter objected to the requirement that domestic manufacture of certain PMN substances is not permitted. The commenter states that if it is unacceptable for Americans to be exposed to these substances, then it is unacceptable for other humans to be exposed. Conversely, the commenter stated that if these substances can be manufactured safely then Americans should also have that opportunity.

EPA Response: The SNUR does not prevent domestic manufacture from occurring, it only requires notification beforehand. Because domestic manufacture is not currently anticipated and may never occur, EPA does not review potential risks associated with domestic manufacture when a PMN is submitted with an indication that the substance will only be imported and not domestically manufactured. EPA did not review or address potential risks of manufacture outside the United States because the statutory authority of TSCA is not applicable to actions outside the United States. If and when a person decides to begin domestic manufacture of the substance, the SNUN review will then permit EPA to assess and address potential risks associated with the SNU before they occur.

Comment 3: For the SNUR for the chemical substance which was the subject of PMN P–04–244, one commenter stated that there was no need for a production volume limit for the SNUR, based on the limited use of the PMN substance as a herbicide intermediate, minimal toxicity effects, and the use of personal protective equipment to limit exposures. Another commenter, who is subject to the consent order, stated that they would petition the Agency to eliminate the testing requirement in the consent order. The second commenter recommended that EPA finalize the SNUR after the agency takes action on the petition.

EPA Response: The consent order requires testing at a specific production volume limit, which is the basis for the production volume limit of manufacture of the PMN substance contained in the SNUR at § 721.80(q). After reviewing the petition to modify the consent order, EPA decided to retain the testing requirement in the consent order, because the petitioner did not submit alternative data that addressed the testing requirement in the consent order. EPA retained the testing requirement in the consent order at a

specific production volume limit to address EPA's finding that the available information is insufficient to permit a reasoned evaluation of the health effects of the PMN substance at larger production volumes. Thus, the final rule will contain the same production volume limit for manufacture. If the person subject to the consent order submits the required testing before exceeding the production volume limit, that person is permitted to exceed the production volume limit without a significant new use notification. EPA will review the testing results and take appropriate action to continue to address any potential unreasonable risks. Processors of the PMN substance are not subject to the production volume limit.

Comment 4: EPA should make it clear to PMN submitters of carbon nanotubes and other nanomaterials that required test methods will be decided on a case-by-case basis and that preference will be given to *in vitro* nanomaterial-specific methods. There are several EPA and National Academy of Science testing strategies that support this approach. In addition to problems with extrapolating information from animal studies to humans for conventional chemicals, nanomaterials possess unique physical and toxicological properties that render animal testing even more problematic. It is critical to completely and accurately characterize nanomaterials and then apply *in vitro* and *in silico* methods within an integrated test strategy. In the event that additional data is requested, EPA should require manufacturers to use high-throughput methods that have been specifically designed for nanomaterials in order to reduce reliance on animal-based testing.

EPA Response: EPA identified recommended testing in the preamble of the proposed SNUR. Any manufacturers, or processors who intend to conduct testing or submit a SNUN are encouraged to contact EPA prior to commencing testing to avoid duplicative testing, to identify alternative testing, and to discuss protocols and testing strategies for any testing to be conducted. EPA recognizes the potential value of high-throughput methods, *in vitro* nanomaterial specific methods, and integrated testing strategies for nanomaterials. EPA continues to evaluate proposed testing methods for carbon nanotubes and other nanomaterials. In assessing this on a case-by-case basis, EPA will continue to consider the alternatives identified by the commenter.

Comment 5: The chemical name for P–10–476 should include the word brominated.

EPA Response: EPA agrees that brominated is part of the chemical name and will include the corrected chemical name in the final SNUR.

Comment 6: All data regarding environmental and health effects of nanomaterials, especially adverse effects, should be made publicly available. EPA must challenge claims of confidential business information (CBI) by manufacturers. EPA could disclose CBI in connection with a public proceeding to determine whether a nano product causes unreasonable adverse effects on health or the environment, if EPA finds such disclosure is necessary in the public interest.

EPA Response: EPA is committed to ensuring that CBI claims do not limit the public availability of environmental and health effects data beyond the confidentiality protections provided in TSCA Section 14. EPA has well established provisions that provide, as appropriate, a mechanism to evaluate CBI claims to ensure such claims are consistent with the statute. Regarding the chemical substances that are nanomaterials and intended to be subject to the proposed SNUR, each consent order and SNUR clearly articulates the basis for EPA's findings and describes the data used to assess health and environmental effects and risks. Moreover there were no CBI claims for health and safety data in the health and safety studies for the substances subject to the proposed SNUR.

Comment 7: The proposed regulations fail to address a number of concerns including addressing the public's and worker's right to know by not providing for mandatory nano-specific ingredient and warning labeling requirements.

EPA Response: The SNURs and the consent orders which are the basis for the SNURs do not require labeling of nano-specific ingredients or nano-specific warnings because (1) the basis for the consent orders and SNURs is not that they are nanomaterials per se, but rather is based on their specific properties and potential risks, and (2) companies that manufacture, process, and use chemical substances that are carbon nanotubes and fullerenes already clearly identify those chemical substances as nanomaterials.

Comment 8: The requirements for the proposed SNURs for P–09–54–57 and P–09–142–144 were inconsistent with requirements in the consent order. Specifically, the proposed SNURs required § 721.63(a)(2)(ii), which is full body protective clothing, when the consent orders required clothing that covers any other exposed areas of the arms, legs, and torso. In addition, for P–09–55, the proposed SNUR includes language that respirators must be used ''with an assigned protection factor (APF) of at least 50''. The consent order for P–09–55 does not contain language requiring a respirator with an APF of 50.

EPA Response: Because the use of clothing that covers any other exposed areas of the arms, legs, and torso, as required by the consent orders for the PMN substances, is an ongoing use, the proposed SNUR requirements have been changed in the final rule to be consistent with the ongoing use. In the final rule, EPA has changed the requirements in § 721.63 to require clothing that covers any other exposed areas of the arms, legs, and torso for these SNURS. Because the consent order for P–09–54–57 does not require that the PMN submitter demonstrate that the clothing is impervious, the SNUR has been revised accordingly to reflect the ongoing use. However, the consent order for P–09–142–144 does require that the PMN submitter demonstrate that the protective clothing is impervious. Therefore, EPA will retain the language in the final rules for P–09–142–144 that imperviousness must be demonstrated for the clothing. EPA incorrectly included in the proposed rule for P–09–55 in § 721.63 the language, ''with an assigned protection factor (APF) of at least 50''. EPA removed that language for P–09–55 in the final rule.

Comment 9: NIOSH recommends a hierarchical approach to reduce worker exposure that relies on respiratory protection only after other approaches have been attempted. The proposed rules allow persons who would be subject to SNURs for CNT to submit data to EPA in support of a New Chemical Exposure Limit (NCEL) under 40 CFR 721.30. The following comments pertain primarily to the CNT chemical substances in the proposed SNURS. To ensure that the PMN substances that are CNT are handled in a safe manner, EPA may want to add a requirement that employers submit information about specific workplace exposure controls in addition to the supporting evidence of airborne exposure data. EPA should also consider providing guidance on methods to measure process emissions and worker exposures, and interpretation of those data in making risk management decisions. NIOSH has published guidance on general approaches as well as specific CNT information. The basis of any NCEL should be compatible with current United States government risk assessment policies and practices used to set occupational exposure limit. NIOSH recommends that EPA use the

NIOSH REL of 1 ug/m³ as an 8 hour-time-weighted average as identified in its final CNT bulletin. This would be an interim recommendation for controlling workplace exposures, until results of ongoing research can elucidate which physical and chemical characteristics of CNT affect their toxicity and until improved methods to measure airborne exposures are established.

EPA Response: EPA agrees that a hierarchy of controls should be applied and that personal protective equipment is the last resort to prevent exposures. See EPA's response to comment 14 describing language it will add to the applicable SNURs in this action. EPA's NCELs language in consent orders states that preventing exposures is the preferred method for protecting workers, see: *http://www.epa.gov/oppt/newchems/pubs/consent-pdf/riskhhncel.pdf.* Most PMN and SNUN submissions describe engineering controls and other steps that will be taken to reduce worker exposures. However, in many cases these measures may not sufficiently reduce exposures or may not used by every manufacturer or processor. EPA requires personal protective equipment for workers who are reasonably likely to be exposed in order to prevent unreasonable risks. However, persons subject to the SNURs for carbon nanotubes may submit information under 40 CFR 721.30 on any alternative exposure controls, including a NCEL, to support a determination that those exposure controls are equivalent to the requirements in the SNUR. While EPA encourages submission of as much information as possible to support that determination, EPA does not require submission of specific workplace exposure controls in addition to airborne exposure data. EPA can provide information on the approach used to measure releases and exposures on a case-by-case basis to support a determination that those exposure controls are equivalent to the requirements in the SNUR. Such information would take into consideration the fact that new chemical substances do not have established methods of detection. When establishing a NCEL or other alternative exposure control, EPA will consider all available data including United States government policies and practices used to set occupational exposure limits. Because of the uncertainty surrounding the NIOSH REL of 1 ug/m³ (as NIOSH noted in its final CNT bulletin the REL is based on the current analytical limit of quantification and may not be preventative of all known health effects see: *http://www.cdc.gov/niosh/docs/2013–145/pdfs/2013–145.pdf*), EPA will not adopt the NIOSH REL as a NCEL at this time because EPA cannot determine that at the REL the potential exposures may not present an unreasonable risk. EPA will consider the final NIOSH REL or other alternative exposure controls for CNTs if a submission requesting such is made under 40 CFR 721.30. This would allow the submitter to send EPA data in support of a proposed exposure level and to demonstrate a technique to comply with that level. EPA would then evaluate the proposal and data as described in 40 CFR 721.30. See: *http://www.epa.gov/oppt/newchems/pubs/consent-pdf/riskhhncel.pdf* and *http://www.epa.gov/oppt/newchems/pubs/ncelresp.pdf,* which, respectively, are EPA's boilerplate TSCA 5(e) consent order containing a NCEL and EPA's Response to Comments on NCELs in TSCA 5(e) Orders. These two documents contain additional information on EPA's approach to NCELs and developing techniques to comply with those requirements.

Comment 10: Each CNT SNUR includes a statement that this rule does not apply '' . . . to quantities of the PMN substance after they have been completely reacted (cured); embedded or incorporated in a polymer matrix . . . that is not intended to undergo further processing, except for mechanical processing.'' NIOSH agrees with this approach. The wording in § 721.10274 of the proposed rule (page 81460) differ from that in other sections by stating ''. . . or embedded in a permanent solid polymer form with a concentration of the PMN substance equal to or below 30 percent. The other sections did not include the ''30 percent'' requirement. Please clarify the basis for EPA's determination for this particular PMN substance.

EPA Response: Based on confidential information in the PMN, EPA determined, that for this PMN substance, P–09–0188, there may not be an unreasonable risk if the PMN substance was contained in a polymer form with a concentration of the PMN substance equal to or below 30 percent; however, EPA is concerned about potential risks above a 30 percent concentration. Consequently, the consent order does not apply when the concentration of the PMN substance is equal to or below 30 percent in a permanent solid polymer form.

Comment 11: The proposed rules for the carbon nanotube chemical substances include statements requiring PMNs to include the projected volume of manufacturing and processing of a chemical substance, the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance, the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance. A change in these factors may not necessarily address potential risk to workers.

EPA Response: These comments pertain to the four factors identified in section 5(a)(2) of TSCA that EPA must consider when determining significant new uses of a chemical substance. EPA must also consider all other relevant factors. These factors are not requirements for information that must be included in PMNs or SNUNs. EPA agrees that a change in these factors does not necessarily result in a risk to human health or the environment. Persons who intend to manufacture, or process chemical substances for an activity that is designated as a significant new use by this final rule must notify EPA at least 90 days before commencing that activity. This required significant new use notification would provide EPA with the opportunity to evaluate the intended new use and to prohibit or limit any activity associated with the new use. EPA would assess the potential risks from those new uses and take action to prevent any unreasonable risks to human health or the environment from activities described in the SNUN.

Comment 12: One commenter stated that the proposed SNURs for the carbon nanotubes restrict the uses of the PMN substances to those specified in the consent order and require certain dermal and respiratory personal protective equipment. Submission of a PMN or SNUN will allow EPA to review these chemical substances but would not address worker safety as the notices would not require reporting of information relevant to risk assessment. There are several uncertainties associated with risk assessment of nanomaterials including a lack of reliable studies, smaller particles may have more detrimental and more potent effects, and smaller particles may cause different or greater exposures to humans and the environment. Because of these uncertainties, risk assessment of nanomaterials will not be adequate.

EPA Response: Despite the uncertainties cited by the commenter, EPA believes that its assessment and risk management of nanomaterials, although sometimes hampered by a lack of submitted data, is adequate to

identify and prevent potential unreasonable risks to human health or the environment from manufacturing processing, and using nanomaterials including risks to workers . EPA has consistently limited exposures to and releases of nanomaterials that are new chemical substances to prevent unreasonable risks through the use of TSCA section 5(e) orders and SNURs.

Comment 13: The SNURs for the carbon nanotubes should require reporting of risk assessment methods and findings, including nanoparticle dimension and relevant information. Personal protective equipment should be required as the last step in risk management. The SNURs should also require some form of engineering and administrative controls on top of the required personal protective equipment with exhaust ventilation systems designed, tested, and maintained as per the recommendations of the American Conference of Governmental Industrial Hygienists and requiring ongoing risk monitoring.

EPA Response: If a manufacturer or processor wants to engage in one of the new uses, the submitter of the SNUN must report all test data that are in the possession or control of the submitter as well as all other data concerning health or environmental effects known or reasonably ascertainable by the submitter, as described in 40 CFR 720.45 and 40 CFR 721.25. Risk assessment methods and findings are not specifically required in these regulations to be submitted in a SNUN and EPA has not required them for other SNUNs because they are not statutorily required to be submitted for section 5 notices under TSCA Section 5(d)(1). However, pursuant to TSCA Section 5(d)(1)(B), available information relevant to potential hazards and risks must be included in a SNUN and could include any relevant risk assessment findings that have been developed by the SNUN submitter. For example, SNUN submitters should report any available particle size data for carbon nanotubes. The SNURs allow for specific engineering and administrative controls proposed by a submitter under 40 CFR 721.30, once EPA has evaluated those controls. See also the responses to comments 9 and 14 for further discussion of engineering and administrative controls.

Comment 14: EPA received a similar set of comments from 26 public submissions. Each of these comments generally stated that EPA's approach to exclusively requiring personal protective equipment in SNURs to prevent worker exposure instead of requiring engineering controls is not following the best occupational health and safety practices. The commenters suggest approaches that EPA could adopt. Several commenters identified the ''hierarchy of controls'' approach for industrial hygiene and workplace safety and controls, where elimination, substitution, engineering controls, and workplace or administrative controls should be used before personal protective equipment. Several commenters stated that persons subject to the SNUR should follow the OSHA requirements that a hierarchy of controls is required before employers use personal protective equipment. Some commenters suggest that EPA should specifically incorporate OSHA requirements at 40 CFR 1910.134(a)(1) into each SNUR or modify requirements in the SNUR at § 721.63 to require a hierarchy of controls. Several commenters also suggested that EPA incorporate into SNURs applicable to CNT the recommendations in NIOSH Current Intelligence Bulletin for CNT. Other commenters noted that a NIOSH Progress Toward Safe Nanotechnology publication, a 2006 Rand Report summarizing a 2005 workshop, EPA's Nanotechnology White Paper, a NIEHS report on training workers, ANSI standards, and a Safe Work of Australia information sheet on use of carbon nanotubes either specifically recommend a hierarchy of controls or recommend an approach using engineering controls to prevent exposures before using personal protective equipment.

EPA Response: EPA agrees that a hierarchy of controls should be applied and that personal protective equipment should be the last option to prevent exposures. EPA's NCELs language in consent orders states that preventing exposures is the preferred method for protecting workers. See: *http://www.epa.gov/oppt/newchems/pubs/consent-pdf/riskhhncel.pdf.* Most PMN and SNUN submissions describe engineering controls and other steps that will be taken to reduce worker exposures. However, in many cases these measures may not sufficiently reduce exposures or it may not be feasible for every manufacturer or processor to use engineering controls. EPA requires personal protective equipment only for workers who are reasonably likely to be exposed in order to prevent unreasonable risks. It should be noted that OSHA regulations only recommend but do not require specific engineering controls for existing chemical substances even when there are available methods for detecting those chemical substances and there are engineering controls known to prevent exposures. For new chemical substances, there is often no data on detection methods and limited data on which engineering controls prevent worker exposures in all situations. In addition, because new chemical substances have not previously been in commerce, there are no specific applicable exposure limits or protective equipment requirements under any other statute. In the case of nanomaterials, such as carbon nanotubes, there is currently even more uncertainty associated with detection methods and effectiveness of certain engineering controls.

EPA has added language to the SNURs in this final action to require engineering controls and administrative controls where feasible but will not change its approach at this time for new chemical substances regarding requests for alternative control measures as set out in 40 CFR 721.30, NCELs requirements, or its requirements for personal protective equipment. Persons who are subject to a SNUR must follow any personal protective equipment requirements where workers are reasonably likely to be exposed. Persons subject to SNUR requirements must request and demonstrate, as set out in 40 CFR 721.30, how any alternative control methods they propose are equivalent to existing SNUR requirements.

Comment 15: EPA also received one comment supporting the SNURs and another comment discussing efforts of the tire industry to incorporate nanomaterials into their products.

EPA response: Neither comment contained a substantive comment regarding the rule so EPA has no response.

VI. Applicability of the Significant New Use Designation

If uses begun after the proposed rule was published were considered ongoing rather than new, any person could defeat the SNUR by initiating the significant new use before the final rule was issued. Therefore EPA has designated the date of publication of the proposed rule as the cutoff date for determining whether the new use is ongoing. Consult the **Federal Register** notice of April 24, 1990 (55 FR 17376) (FRL–3658–5) for a more detailed discussion of the cutoff date for ongoing uses.

Any person, who began commercial manufacture, or processing of the chemical substances for any of the significant new uses designated in the proposed SNUR after the date of publication of the proposed SNUR, must

stop that activity before the effective date of the final rule. Persons who ceased those activities will have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires, before engaging in any activities designated as significant new uses. If a person were to meet the conditions of advance compliance under 40 CFR 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing.

In the TSCA section 5(e) consent orders for 15 of the chemical substances regulated under this rule, EPA has established restrictions in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These restrictions will not be removed until EPA determines that the unrestricted use will not present an unreasonable risk of injury or result in significant or substantial exposure or environmental release. This determination is usually made based on the results of the required or recommended toxicity tests.

In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. of the proposed rule lists tests required or recommended in each of the section 5(e) consent orders underlying the proposed 5(e) SNURs, and lists tests recommended for the substances subject to the proposed non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, and processors of the chemical substances during the development of the direct final rule. EPA's complete Economic Analysis is available in the docket under docket ID number EPA–HQ–OPPT–2010–0279.

X. Statutory and Executive Order Reviews

A. Executive Order 12866

This final rule establishes SNURs for several new chemical substances that were the subject of PMNs and, in some cases, a TSCA section 5(e) consent order. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

On February 18, 2012, EPA certified pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUN submitted by any small entity would not cost significantly more than $8300.

A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit IX. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

• A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

• Submission of the SNUN would not cost any small entity significantly more than $8300. Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this final rule. As such, EPA has determined that this final rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This final rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This final rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 14, 2013.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by adding the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10265	2070–0012
721.10266	2070–0012
721.10267	2070–0012
721.10268	2070–0012
721.10269	2070–0012
721.10270	2070–0012
721.10271	2070–0012
721.10272	2070–0012
721.10273	2070–0012
721.10274	2070–0012
721.10275	2070–0012
721.10276	2070–0012
721.10277	2070–0012
721.10278	2070–0012
721.10279	2070–0012
721.10280	2070–0012
* * * * *	

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PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.10265 to subpart E to read as follows:

§ 721.10265 Ethane, 2-bromo-1, 1-difluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethane, 2-bromo-1,1-difluoro-. (PMN P–04–244; CAS No. 359–07–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 1000 meets the minimum requirements for § 721.63(a)(4): NIOSH-certified supplied-air respirator operated in pressure demand or other positive pressure mode and equipped with a tight-fitting full facepiece.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i), a manufacturer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.5 mg/m^3 as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e)(concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv)(use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.5 mg/m^3), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k)(chemical intermediate for a herbicide) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 3. Add § 721.10266 to subpart E to read as follows:

§ 721.10266 Multi-walled carbon nanotubes (generic) (P–08–733 and P–08–734).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as multi-walled carbon nanotubes (PMNs P–08–733 and P–08–734) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substances after they have been completely reacted (cured); embedded or incorporated into a polymer matrix that has been reacted (cured); embedded, encapsulated or incorporated by the polymer binder into a permanent solid matrix (does not include slurries) that is not intended to undergo further processing, except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., physical containment, exhaust control ventilation, or isolation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)—certified respirator with an assigned protection factor (APF) of at least 50 meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (k), and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 4. Add § 721.10267 to subpart E to read as follows:

§ 721.10267 [5,6]Fullerene-C60-Ih.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as [5,6]Fullerene-C60-Ih (PMN P–09–54; CAS No. 99685–96–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iv), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k)(an intermediate compound for use in producing downstream products that will in turn be used in organic electronic devices and an additive to improve mechanical properties or conductivity; a compound used to improve the mechanical properties of rubbers, plastics, and lubricants; or a compound for use as an additive to increase the conductivity of materials).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b),(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirem*ents. The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10268 to subpart E to read as follows:

§ 721.10268 [5,6]Fullerene-C70–D5h(6).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as [5,6]Fullerene-C70–D5h(6) (PMN P–09–55; CAS No. 115383–22–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iv), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (an intermediate compound for use in producing downstream products that will in turn be used in organic electronic devices and an additive to improve mechanical properties or conductivity; a compound used to improve the mechanical properties of rubbers, plastics, and lubricants; or a compound for use as an additive to increase the conductivity of materials).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. Add § 721.10269 to subpart E to read as follows:

§ 721.10269 [5,6]Fullerene-C84–D2.

(a) Chemical *substance and significant new uses subject to reporting.* (1) The chemical substance identified as [5,6]Fullerene-C84–D2 (PMN P–09–56; CAS No. 145809–19–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iv), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k)(an intermediate compound for use in producing downstream products that will in turn be used in organic electronic devices and an additive to improve mechanical properties or conductivity; a compound used to improve the mechanical properties of rubbers, plastics, and lubricants; or a compound for use as an additive to increase the conductivity of materials).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b),(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirem*ents. The provisions of § 721.185 apply to this section.

■ 7. Add § 721.10270 to subpart E to read as follows:

§ 721.10270 [5,6]Fullerene-C84–D2d.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as [5,6]Fullerene-C84–D2d (PMN P–09–57; CAS No. 145809–20–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iv), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4),

engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 cartridges.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (an intermediate compound for use in producing downstream products that will in turn be used in organic electronic devices and an additive to improve mechanical properties or conductivity; a compound used to improve the mechanical properties of rubbers, plastics, and lubricants; or a compound for use as an additive to increase the conductivity of materials).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b),(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10271 to subpart E to read as follows:

§ 721.10271 3′H-Cyclopropa[1,9][5,6]fullerene-C60-Ih-3′-butanoic acid, 3′-phenyl-, methyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 3′H-Cyclopropa[1,9][5,6]fullerene-C60-Ih-3′-butanoic acid, 3′-phenyl-, methyl ester, (PMNs P–09–142 and Chemical A in P–09–416, CAS Number 160848–22–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substances after they have been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); or embedded in a permanent solid polymer form that is not intended to undergo further processing, except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(clothing which covers any other exposed areas of the arms, legs, and torso), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 cartridges.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) (use as a compound used in fabrication and/or operation of electronic devices that enables or improves the conductivity, efficiency, voltage or other characteristics of the device, a compound that improves the mechanical properties of lubricants and plastics, or use as an acceptor molecule in a polymer coating in an encapsulated organic photovoltaic electronic device) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 9. Add § 721.10272 to subpart E to read as follows:

§ 721.10272 3′H-Cyclopropa[8,25][5,6]fullerene-C70–D5h(6)-3′-butanoic acid, 3′-phenyl-,methyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as 3′H-Cyclopropa[8,25][5,6]fullerene-C70–D5h(6)-3′-butanoic acid, 3′-phenyl-, methyl ester (PMNs P–09–143 and Chemical B in P–09–416, CAS Number 609771–63–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substances after they have been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); or embedded in a permanent solid polymer form that is not intended to undergo further processing, except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2) (clothing which covers any other exposed areas of the arms, legs, and torso), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 cartridges.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (use as a compound used in fabrication and/or operation of electronic devices that enables or improves the conductivity, efficiency, voltage or other characteristics of the device, a compound that improves the mechanical properties of lubricants and plastics, or use as an acceptor molecule in a polymer coating in an encapsulated organic photovoltaic electronic device) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k)

are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 10. Add § 721.10273 to subpart E to read as follows:

§ 721.10273 3′H-Cyclopropa[7,22][5,6]fullerene-C70–D5h(6)-3′-butanoic acid, 3′-phenyl-, methyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as 3′H-Cyclopropa[7,22][5,6]fullerene-C70–D5h(6)-3′-butanoic acid, 3′-phenyl-,methyl ester (P–09–144 and Chemical C in P–09–416, CAS Number 1051371–21–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substances after they have been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); or embedded in a permanent solid polymer form that is not intended to undergo further processing, except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2) (clothing which covers any other exposed areas of the arms, legs, and torso), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 cartridges.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (use as a compound used in fabrication and/or operation of electronic devices that enables or improves the conductivity, efficiency, voltage or other characteristics of the device, a compound that improves the mechanical properties of lubricants and plastics, or use as an acceptor molecule in a polymer coating in an encapsulated organic photovoltaic electronic device) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 11. Add § 721.10274 to subpart E to read as follows:

§ 721.10274 Multi-walled carbon nanotubes (generic) (P–09–188).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–09–188) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); or embedded in a permanent solid polymer form with a concentration of the PMN substance equal to or below 30 percent that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., physical containment, exhaust control ventilation, or isolation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), (m), (o), and (q).

(iii) *Release to Water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 12. Add § 721.10275 to subpart E to read as follows:

§ 721.10275 Multi-walled carbon nanotubes (generic) (P–09–0417).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–09–417) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing, except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., physical containment, exhaust control ventilation, or isolation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at

least 50 meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k) (plastics additive to improve electrical, thermal and/or mechanical properties), (m), and (o).

(iii) *Release to Water.* Requirements as specified in § 721.90(b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i) and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10276 to subpart E to read as follows:

§ 721.10276 Multi-walled carbon nanotubes (generic) (P–10–39).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–10–39) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer, metal, glass, or ceramic form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., physical containment, exhaust control ventilation, or isolation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an approved protection factor (APF) of at least 50 meets the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k), (m), (o), and (p)(120,000 kilograms of the aggregate of P–10–39 and P–10–40 the substance described in § 721.10277).

(iii) *Release to Water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 14. Add § 721.10277 to subpart E to read as follows:

§ 721.10277 Single-walled and multi-walled carbon nanotubes (generic) (P–10–40).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as single-walled and multi-walled carbon nanotubes (PMN P–10–40) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer, metal, glass, or ceramic form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., physical containment, exhaust control ventilation, or isolation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 50 meet the minimum requirements for § 721.63(a)(4): NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N–100, P–100, or R–100 filter.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (m), (o), and (p)(120,000 kilograms of the aggregate of P–10–40 and P–10–39 the substance described in § 721.10276).

(iii) *Release to Water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 15. Add § 721.10278 to subpart E to read as follows:

§ 721.10278 4,4′-Bipyridinium, 1-(phosphonoalkyl)-1′-substituted-, salt with anion (1:2) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 4,4′-Bipyridinium, 1-(phosphonoalkyl)-1′-substituted-, salt with anion (1:2) (PMN P–10–224) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace:* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3)(applicable to gloves only), (a)(4), (a)(6), (b)(concentration set at 1.0 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at

least 10 meet the minimum requirements for § 721.63(a)(4):

(A) NIOSH-certified air-purifying, tight-fitting half-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(B) NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(C) NIOSH-certified powered air-purifying respirator equipped with a loose- fitting hood or helmet and high efficiency particulate air (HEPA) filters;

(D) NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece (either half-face or full-face) and HEPA filters; or

(E) NIOSH-certified supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half-face or full-face).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (j), (s)(1000 kilograms), (v)(1), and (v)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and (i) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

The provisions of § 721.1725(b)(1) apply to this section.

■ 16. Add § 721.10279 to subpart E to read as follows:

§ 721.10279 Multi-walled carbon nanotubes (generic) (P–10–246).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–10–246) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing, except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., physical containment, exhaust control ventilation, or isolation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 50 meet the minimum requirements for § 721.63(a)(4):

(A) NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(B) NIOSH-certified powered air-purifying respirator equipped with a loose-fitting hood or helmet and high efficiency particulate air (HEPA) filters; or

(C) NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece (either half-face or full-face) and HEPA filters.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k) (conductivity additive to resins, rubber, and to battery electrodes), and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 17. Add § 721.10280 to subpart E to read as follows:

§ 721.10280 Benzene ethenyl-, polymer with 1,3-butadiene, brominated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene ethenyl-, polymer with 1,3-butadiene, brominated (PMN P–10–476; CAS No. 1195978–93–8)) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (manufacture by the method where the average number molecular weight is in the range of 1000 to 10,000 daltons, or where less than 5 percent of the particles are in the respirable range of 10 microns or less and the average number molecular weight is greater than or equal to 10,000 daltons).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2013–15032 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2013–0007; FRL–9826–4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Air Basin; Approval of PM_{10} Maintenance Plan and Redesignation to Attainment for the PM_{10} Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, as a revision to the California State implementation plan (SIP), the State's request to redesignate the Los Angeles-South Coast Air Basin (South Coast) to attainment for the 24-hour particulate matter of ten microns or less (PM_{10}) national ambient air quality standard (NAAQS). EPA is also approving the PM_{10} maintenance plan and the associated PM_{10} motor vehicle emissions budgets for use in transportation conformity determinations necessary for the South Coast PM_{10} area. Finally, EPA is approving the attainment year emissions inventory. EPA is taking these actions because the SIP revision meets the

requirements of the Clean Air Act (CAA) and EPA guidance for such plans and motor vehicle emissions budgets.

DATES: *Effective Date:* This rule is effective on July 26, 2013.

ADDRESSES: You may inspect the supporting information for this action, identified by docket number EPA–R09–OAR–2013–0007, by one of the following methods:

1. Federal eRulemaking portal, *http://www.regulations.gov,* please follow the online instructions; or,

2. Visit our regional office at, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* voluminous records, large maps, copyrighted material), and some may not be publicly available in either location (*e.g.,* Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, EPA Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Summary of Proposed Action

On April 8, 2013 (78 FR 20868), based on EPA's review of the *Final PM_{10} Redesignation Request and Maintenance Plan for the South Coast Air Basin* (December 2009) (''2009 South Coast PM_{10} Redesignation Request and Maintenance Plan'') submitted by California, air quality monitoring data, and other relevant materials, EPA proposed to approve the State of California's request to redesignate the South Coast PM_{10} nonattainment area to attainment of the PM_{10} NAAQS, pursuant to CAA sections 107(d)(3)(E) and 175A. The background for today's actions is discussed in detail in EPA's April 8, 2013 proposed rulemaking and technical support document (TSD).

We based our conclusion that the area had attained the standard on our determination that the three years of complete, quality-assured data for the period 2008–2010 showed that the South Coast PM_{10} nonattainment area had attained the PM_{10} NAAQS.

We also determined based on more recent data that the area continues to attain the NAAQS based on certified, quality-assured 2012 data. Data for 2013 have not been submitted to EPA's Air Quality System (AQS) and are not required to be submitted until June 30, 2013.

Our proposed approval of the redesignation request was based on EPA's finding that the area meets all other CAA redesignation requirements under section 107(d)(3)(E) and the CAA maintenance plan requirements under section 175A.

EPA proposed to approve the State's maintenance plan, which includes SIP-approved control measures for fugitive dust, open burning and wood burning devices, cement manufacturing, aggregate and related operations, and paved and unpaved roads, among others. Implementation of these control measures has resulted in attainment of the PM_{10} NAAQS in the South Coast nonattainment area and the continued implementation of these control measures is expected to provide for maintenance of the PM_{10} NAAQS into the future. We also proposed to approve the motor vehicle emissions budgets associated with the plan because the plan demonstrated that these emissions levels, when considered with emissions from all other sources, were consistent with maintenance of the NAAQS.

Finally, EPA proposed to approve the attainment year emissions inventory submitted with the maintenance plan as meeting the requirements of CAA section 172(c)(3).

II. Public Comments and EPA Responses

EPA provided for a 30-day public comment period on our proposed action. The comment period ended on May 8, 2013. We received one comment letter from the South Coast Air Quality Management District (SCAQMD or District) on May 8, 2013.[1] We respond to that comment here.

Comment: SCAQMD strongly supports EPA's proposed action. The District also commented that it submitted, through CARB, exceptional events packages requesting exclusion of monitoring data from multiple sites in the SCAQMD network from October 21, 2007 and July 5, 2007 under EPA's Exceptional Events Rule (72 FR 28612, May 22, 2007). The exceptional events requests were submitted to EPA by CARB on October 23, 2009 and December 22, 2009, respectively. The letter also requested EPA to acknowledge the requests if EPA did not evaluate these requests before taking final action on this proposal.

Response: EPA received two exceptional events requests from CARB for South Coast monitoring data from 2007 on October 23, 2009 and December 22, 2009. EPA is not taking any action on the exceptional events requests cited in the District's comment letter. It is not necessary for EPA to process those requests because this final action is based on monitored data occurring after the time of those requests. Therefore, whether we granted or denied the exceptional events requests concerning data from 2007, it would not have any bearing on our action today.

III. EPA's Final Action

Based on our review of the 2009 South Coast PM_{10} Redesignation Request and Maintenance Plan submitted by the State, air quality monitoring data, and other relevant materials, EPA finds that the State has addressed all the necessary requirements for redesignation of the South Coast air basin to attainment of the PM_{10} NAAQS, pursuant to CAA sections 107(d)(3)(E) and 175A.

First, under CAA section 107(d)(3)(D), we are approving CARB's request, which accompanied the submittal of the maintenance plan, to redesignate the South Coast PM_{10} nonattainment area to attainment for the 24-hour PM_{10} NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion is based on our determination that the area has attained the 24-hour PM_{10} NAAQS; that relevant portions of the California SIP are fully approved; that the improvement in air quality is due to permanent and enforceable reductions in emissions; that California has met all requirements applicable to the South Coast PM_{10} nonattainment area with respect to section 110 and part D of the CAA; and that we are approving the South Coast PM_{10} maintenance plan as part of today's action.

Second, in connection with the 2009 South Coast PM_{10} Redesignation Request and Maintenance Plan, EPA is finding that the maintenance demonstration showing how the area will continue to attain the 24-hour PM_{10} NAAQS for at least 10 years beyond redesignation (i.e., through 2030) and

[1] See letter, Elaine Chang, DrPH, Deputy Executive Officer, South Coast Air Quality Management District, to Wienke Tax, US Environmental Protection Agency, Region IX, dated May 8, 2013, in the docket for today's action.

the associated motor vehicle emissions budgets meet applicable CAA requirements for maintenance plans and transportation conformity requirements under 40 CFR 93.118(e). We are also approving the 2010 emissions inventory as meeting the applicable requirements for emissions inventories in CAA sections 175A and 172.

With today's action, we are finalizing our approval of the motor vehicle emissions budgets. After the effective date of today's final rule, the approved budgets must be used in any future regional emissions analysis for PM_{10} conducted by the local metropolitan planning organization, the Southern California Association of Governments, and the Federal Highway Administration.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For these reasons, these actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the final action does not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Nonetheless, in accordance with EPA's 2011 Policy on Consultation and Coordination with Tribes, EPA has notified Tribes located within the South Coast PM_{10} nonattainment area of this action.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 12, 2013.

Jared Blumenfeld,

Regional Administrator, Region 9.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(426) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(426) The following plan was submitted on April 28, 2010, by the Governor's Designee.

(i) [Reserved]

(ii) Additional materials.

(A) South Coast Air Quality Management District.

(*1*) *Final PM_{10} Redesignation Request and Maintenance Plan for the South Coast Air Basin* (December 2009) (2009 South Coast PM_{10} Redesignation Request and Maintenance Plan), adopted January 8, 2010.

(*2*) SCAQMD Board Resolution 10–1, dated January 8, 2010, adopting the 2009 South Coast PM_{10} Redesignation Request and Maintenance Plan.

(B) State of California Air Resources Board.

(*1*) CARB Resolution 10–21, dated March 25, 2010, adopting the 2009 South Coast PM_{10} Redesignation Request and Maintenance Plan.

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—[Amended]

■ 4. Section 81.305 is amended in the table for ''California-PM–10'' by revising the entry under Riverside, Los Angeles, Orange, and San Bernardino Counties for the ''South Coast Air Basin'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Riverside, Los Angeles, Orange, and San Bernardino Counties.				
South Coast Air Basin	7/26/13	Attainment		
* * *	*	*	*	*

* * * * *

[FR Doc. 2013–15145 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0889; FRL–9391–4]

Sulfoxaflor; Pesticide Tolerances; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of May 17, 2013, concerning the establishment of tolerances for the insecticide sulfoxaflor on multiple commodities. This document corrects an inadvertent error by moving the tolerances established under 40 CFR 180.670 to 40 CFR 180.668 and removing § 180.670. This document additionally removes the time-limited tolerances for cotton, undelinted seed; cotton, gin byproducts; and cotton, hulls as the tolerances have been superseded by permanent tolerances.

DATES: This final rule is effective June 26, 2013.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0889, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jennifer Urbanski, Registration Division, (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0156; email address: *urbanski.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action.

II. What does this technical correction do?

EPA issued a final rule in the **Federal Register** on May 17, 2013 (78 FR 29041), establishing tolerances for residues of the insecticide sulfoxaflor in or on multiple commodities. That rule incorrectly established tolerances for sulfoxaflor in a new section of 40 CFR part 180 (§ 180.670). Instead of creating a new section for these tolerances, EPA should have added those newly established sulfoxaflor tolerances to the already existing sulfoxaflor tolerances contained in 40 CFR 180.668. The incorrect regulatory designations were due to an inadvertent error in the **Federal Register** publication. Therefore, this action corrects this error by transferring the tolerances contained in § 180.670 to § 180.668 and removes § 180.670. In addition, EPA is removing the time-limited tolerances for cotton, undelinted seed; cotton, gin byproducts; and cotton, hulls contained in paragraph (b) of § 180.668 since these time-limited tolerances have been superseded by permanent tolerances that were established in the May 17, 2013 rule (78 FR 29041).

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this action does not make any substantive alterations in the existing tolerances. It is merely a housekeeping measure. Today's action merges the contents of two existing regulations that contain sulfoxaflor tolerances and removes the time-limited tolerances contained in § 180.668(b) since they have been superseded by permanent tolerances contained in paragraph (a). EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and executive order reviews apply to this action?

This final rule implements a technical correction to the Code of Federal Regulations, and it does not otherwise impose or amend any requirements. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject

to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.668 by adding paragraph (a) and by removing and reserving paragraph (b) to read as follows:

§ 180.668 Sulfoxaflor; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide sulfoxaflor, including its metabolites and degradates, in or on the commodities in the table. Compliance with the tolerance levels specified is to be determined by measuring only sulfoxaflor (*N*-[methyloxido[1-[6-(trifluoromethyl)-3-pyridinyl]ethyl]-γ^4-sulfanylidene]cyanamide).

Commodity	Parts per million
Almond, hulls	6.0
Barley, grain	0.40
Barley, hay	1.0
Barley, straw	2.0
Bean, dry seed	0.20
Bean, succulent	4.0
Beet, sugar, dried pulp	0.07
Beet, sugar, molasses	0.25
Berry, low growing, subgroup 13–7G	0.70
Cattle, fat	0.10
Cattle, meat	0.15
Cattle, meat byproducts	0.40
Cauliflower	0.08
Citrus, dried pulp	3.6
Cotton, gin byproducts	6.0
Cotton, hulls	0.35
Cottonseed subgroup 20C	0.20
Fruit, citrus, group 10–10	0.70
Fruit, pome, group 11–10	0.50
Fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwi fruit	2.0
Fruit, stone, group 12	3.0
Goat, fat	0.10
Goat, meat	0.15
Goat, meat byproducts	0.40
Grain, aspirated fractions	20.0
Grape, raisin	6.0
Hog, fat	0.01
Hog, meat	0.01
Hog, meat byproducts	0.01
Horse, fat	0.10
Horse, meat	0.15
Horse, meat byproducts	0.40
Leafy greens, subgroup 4A	6.0
Leafy petiole, subgroup 4B	2.0
Milk	0.15
Nuts, tree, group 14	0.015
Onion, bulb, subgroup 3–07A	0.01
Onion, green, subgroup 3–07B	0.70
Pistachio	0.015
Poultry, eggs	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, meat byproducts	0.01
Rapeseed, meal	0.50
Rapeseed subgroup 20A	0.40
Sheep, fat	0.10
Sheep, meat	0.15
Sheep, meat byproducts	0.40
Soybean, seed	0.20
Tomato, paste	2.60
Tomato, puree	1.20
Vegetable, *brassica,* leafy, group 5, except cauliflower	2.0
Vegetable, cucurbit, group 9	0.40
Vegetable, fruiting, group 8–10	0.70
Vegetable, leaves of root and tuber, group 2	3.0
Vegetable, legume, foliage, group 7	3.0
Vegetable, root and tuber, group 1	0.05
Watercress	6.0
Wheat, forage	1.0
Wheat, grain	0.08
Wheat, hay	1.5
Wheat, straw	2.0

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

§ 180.670 [Removed]

■ 3. Remove § 180.670.

[FR Doc. 2013–15306 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90; FCC 13–73]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) provides for a second round of Phase I funding to occur in 2013 and revises the rules for Phase I going forward to further leverage private investment in rural America and accelerate the availability of broadband to consumers who lack access.

DATES: Effective July 26, 2013, except for §§ 54.312(c)(4) through (c)(6), 54.312(c)(8), and 54.313(b), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Ryan Yates, Wireline Competition Bureau, (202) 418–0886 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 10–90; FCC 13–73, adopted on May 21, 2013 and released on May 22, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–13–73A1.pdf*

I. Introduction

1. On November 18, 2011, the Commission released the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, which comprehensively reformed and modernized the high-cost universal service and intercarrier compensation systems. Recognizing, among other facts, that over 80 percent of the more than 18 million Americans who were unserved by broadband at that time lived in price cap territories, the Commission provided for two phases of funding to make broadband-capable networks available to as many unserved locations as possible in those areas. In Connect America Phase I, the Commission froze existing high-cost support for price cap carriers and provided up to $300 million of additional, incremental support in 2012 in order to advance deployment of broadband-capable infrastructure pending implementation of Phase II subject to strict accountability and efficiency measures. Approximately $115 million was accepted, which will deliver new broadband service to nearly 400,000 unserved Americans.

2. We now provide for a second round of Connect America Phase I incremental funding in 2013 to further leverage private investment in rural America and accelerate the availability of broadband to consumers who lack access. We allocate $300 million for this second round. Price cap carriers will be able to accept support to extend broadband-capable networks under the rules for the first round of Phase I. In addition, they will have an opportunity to deploy into newly eligible areas that are unserved by broadband, so long as they comply with additional requirements discussed below. We also adopt a process to challenge the eligibility of particular census blocks, establish two different per-location support amounts based on the existing level of Internet access ($550 for homes with low-speed Internet access and $775, as in the first round, for homes with only dial-up access), and make certain other rule changes to encourage participation and ensure accountability and oversight. Especially in light of several major carriers' commitments to match new Connect America funding with an equal new investment of private capital, the additional funding we make available has the potential to expand broadband access to hundreds of thousands of additional, currently unserved Americans. We expect this to be the last round of Phase I funding, given the significant progress to date on Phase II implementation.

II. Discussion

3. *Overview.* In this Order, the Commission provides for a second round of Phase I funding to occur in 2013 and revises the rules for Phase I going forward. We allocate a maximum of $300 million for this second round of Phase I incremental support. Price cap carriers will be allocated funds through the same system used in the first round of Phase I. However, carriers will have the option to accept above their allocated support, so as to have an opportunity to receive additional funding if other carriers decline the support. Additionally, Phase I eligibility is expanded to any location currently unserved by Internet service with speeds of 3 Mbps downstream and 768 kbps upstream (3 Mbps/768 kbps) or higher, though a lower dollar amount of support is provided for locations that already have some level of Internet access. We adopt a process for challenges to the eligibility of specific areas where price cap carriers propose to extend broadband-capable infrastructure. We require information regarding Phase I elections to be public and for carriers to provide geocoded location information when making certifications regarding their buildout to facilitate the Commission's oversight.

4. *Second Round of Connect America Phase I.* While the Bureau has made significant progress in implementing Phase II of Connect America, we conclude that a second round of Phase I is an appropriate way to promote the rapid and efficient expansion of broadband-capable infrastructure to serve consumers lacking broadband that meets the Commission's definition. We therefore instruct the Bureau to provide a new round of Connect America Phase I incremental support for 2013.

5. The budget for the new round of Phase I is set at $300 million. The Commission previously set the budget for an additional round of Phase I support in 2013 at $300 million and provided the Bureau discretion to pro rate that amount if Phase II was implemented during 2013. We now conclude that $300 million would be an appropriate amount for a second round of Phase I incremental support to be provided in 2013, given the remaining funding from 2012 and the progress of Phase II implementation. A $300 million budget should provide a reasonable amount to accommodate potential demand for funding that leverages private investment to accelerate deployment of broadband-capable infrastructure to consumers who can quickly be served in the near-term. As with the first round of Phase I, it is not our goal that all $300 million will be accepted. Rather, we seek to use these funds now to spur rapid broadband deployment to ''lower-cost areas where there is no private sector business case for deployment of broadband.'' Any Phase I support that remain unclaimed at the end of the second round of support will be added to the budget for Phase II, pro-rated in equal annual amounts over the Phase II time period. This will have the effect of increasing the yearly budget for Phase II by an amount equal to one-fifth of the unclaimed funds.

6. Price cap carriers will be allocated Phase I incremental support using the same allocations as in the first round of Phase I. Carriers will have 75 days from the release of this Order to make their elections.

7. As with the first round of Phase I, each carrier may elect to receive all, none, or a portion of its allocated Phase I incremental support. However, in contrast to Phase I, a carrier may also elect to receive an amount above its allocated incremental support, up to the total budget of $300 million for this second round of Phase I. To the extent other carriers decline to accept Phase I incremental support, any remaining funds will be redistributed to carriers that are willing to commit to additional deployment if they receive funding above their initial allocations. If the total demand of all carriers exceeds $300 million, we authorize up to an additional $185 million in funding. Under this approach, each carrier is assured of its allotted amount to expand broadband-capable infrastructure to unserved consumers, while at the same time providing additional funds to those carriers willing and able to expand to more Phase I eligible locations.

8. We delegate authority to the Bureau to set the specific deadlines, including the deadlines for any certifications, for a second round of Phase I support and to take other steps to implement a

second round, subject to the requirement that the amount of support offered does not exceed the total budget of $300 million.

9. With the exception of the rules we explicitly change in this Order, all the rules and requirements from the first round of Phase I apply *mutatis mutandis* to the second round of Phase I.

10. *Expanding Eligible Areas.* To meet its Phase I service obligations, a carrier must deploy to locations unserved by broadband. Under the *USF/ICC Transformation Order,* however, only a subset of unserved locations was originally eligible for Phase I for support: specifically, only those locations that lacked Internet access service with speeds of at least 768 kbps/200 kbps (i.e. only dial-up Internet access). In the *Phase I FNPRM,* 77 FR 76435, December 28, 2012, the Commission sought comment on whether to expand eligibility to a larger pool of locations unserved by broadband meeting the Commission's 4 Mbps/1 Mbps standard.

11. In addition to areas lacking 768 kbps/200 kbps Internet access, we now expand eligibility for Phase I support to any location that lacks 3 Mbps/768 kbps Internet access. We do so in recognition that carriers evaluate the economics of extending fiber to an area on a project-by-project basis, with each project potentially containing some customers lacking 768 kbps/200 kbps, some lacking 1.5 Mbps/768 kbps, and others lacking 3 Mbps/768 kbps. By providing some support for those locations that lack 1.5 Mbps/768 kbps or 3 Mbps/768 kbps, carriers should find it more economical to extend fiber closer to those locations that only have dial-up Internet access. Thus, expanding eligibility to include locations with minimal non-dial-up Internet access, but without broadband, should also improve the economics of extending service to those customers who lack even 768 kbps/200 kbps Internet access. Moreover, upgrading the most distant locations to receive service meeting our 4 Mbps/1 Mbps standard should have the added benefit of providing many consumers currently lacking broadband with access to speeds in excess of our 4 Mbps/1 Mbps standard.

12. At the same time, we remain committed to prioritizing broadband-capable infrastructure to those areas that completely lack even 768 kbps/200 kbps Internet access. Therefore, we place certain strictures on carriers that seek to avail themselves of the opportunity to count towards their deployment obligation locations in the expanded areas of availability. *First,* price cap carriers must accept support for a second round of Phase I under the rules governing the first round, to the extent they are able to do so, before they may avail themselves of the expanded eligibility of areas adopted in this Order. Specifically, a carrier may not accept funding for locations already served by Internet access with speeds of 768 kbps/200 kbps unless the carrier has already accepted funding for all projects or routes including locations unserved by 768 kbps/200 kbps that can economically be built with $775 in Connect America funding for each location unserved by 768 kbps/200 kbps plus an equal amount of non-Connect America carrier capital expenditure funding. For example, to the extent a carrier analyzed its network under the previous Phase I rules to identify projects to extend broadband-capable infrastructure to locations lacking 768 kbps/200 kbps service, and the identified projects would be economic to build with a one-to-one match of Connect America and carrier resources, the carrier must prioritize these projects when it accepts funding, and may not count toward satisfaction of its deployment obligation locations already served by Internet access with speeds of 768 kbps/200 kbps, regardless of the fact that some locations served by 768 kbps/200 kbps but not 3 Mbps/768 kbps will be reached through these identified projects.

13. *Second,* if a carrier has accepted funding for all projects or routes to locations unserved by 768/200 kbps that can be economically reached as noted in the preceding paragraph, it may also accept funding for routes to locations unserved by 3 Mbps/768 kbps that would count toward satisfaction of its deployment obligation. However, to the extent that carrier has multiple projects or routes for which it would be economic to extend service with a one-for-one match of Connect America funding, it must prioritize funded projects or routes so as to maximize the number of newly served locations that are currently unserved by Internet access with speeds of 768 kbps/200 kbps that will receive service as a result of Phase I funding. To accept new Phase I funding and count deployment to locations served by 768 kbps/200 kbps but unserved by 3 Mbps/768 kbps, carriers will be required to certify that they have met both conditions.

14. In conjunction with these rule changes, we adopt a different metric for the dollar amount of support for those locations lacking 3 Mbps/768 kbps, compared to the $775 available for locations unserved by 768 kbps/200 kbps. We conclude that it is appropriate for carriers to be permitted to meet buildout obligations by deploying broadband-capable infrastructure to locations that have service of 768 kbps/200 kbps but not 3 Mbps/768 kbps for $550 per location. Less fiber should be needed to upgrade the locations with some form of Internet access, as they are likely to be closer to the central office or remote terminal.

15. In addition to expanding eligible locations to any location lacking 3 Mbps/768 kbps Internet access, we also provide limited eligibility for locations shown on the current version of the National Broadband Map (data as of June 2012) as served by 3 Mbps/768 Internet access. A carrier may satisfy its Phase I obligations by deploying to certain locations in its own service territory that are shown on the National Broadband Map as being served by 3 Mbps/768 kbps where it is likely that such service is not in fact delivered, so long as no other provider is offering service at speeds of 3 Mbps/768 kbps to those locations. The carrier must identify those specific locations and certify that the locations are currently served from a copper-fed digital subscriber line access multiplexer (DSLAM) and are shown on the National Broadband Map as receiving speeds of 3 Mbps/768 kbps or less. It is likely that while locations served by a copper-fed DSLAM are shown as having an advertised speed of 3 Mbps/768 kbps, actual speeds to such locations fall below that. As noted in the record, copper-fed DSLAMs have a maximum of 12 Mbps of backhaul available; as consumers increasingly use bandwidth-intensive applications, such as streaming video, the aggregate demand for bandwidth of all users on a DSLAM exceeds the DSLAM's backhaul capacity, resulting in reduced speeds to the end user.

16. We will also limit support for any census block containing a project that received funding under the Broadband Initiatives Program (BIP) or the Broadband Technology Opportunities Program (BTOP), so long as the project meets the speed requirement that would disqualify the location from Phase I (i.e., the project will eventually provide speeds of 3 Mbps/768 kbps or greater). It would be an inefficient use of public funds to provide government support to two different projects aimed at serving the same location. If a carrier wishes to satisfy its Phase I deployment obligations by building in census blocks with BIP or BTOP projects, it must certify that it has engaged in due diligence and reviewed publicly available data sources to ensure that the particular locations it plans to serve do

not and will not receive funding under BIP or BTOP for the construction of a network meeting our broadband standards. We direct the Bureau to work with the Universal Service Administrative Company (USAC), the National Telecommunications and Information Administration, and/or the Rural Utilities Service, as appropriate, to take steps necessary to ensure Phase I support is not provided to areas receiving BIP or BTOP support.

17. Also, in order to use Connect America funds in the most efficient manner possible and avoid providing excess support to an area, we direct the Bureau to ensure the funding is not provided to the same census blocks under both Phase I incremental support and Phase II. No carrier should be allowed to satisfy its Phase I obligations in any census block where it receives Phase II support. Carriers must be prepared to deploy to an equivalent number of locations that are unserved in a census block where they are not receiving Phase II support. If a carrier accepts Phase II support in a census block where it had initially planned to deploy broadband-capable networks to locations in order to meet its Phase I obligations, it must identify and deploy to the requisite number of locations in another census block for which it did not receive Phase II support.

18. *Service Obligations.* A carrier electing to receive second round Phase I support must deploy to a number of unserved locations. The number of locations varies depending on the speed of service currently available to that location. As noted above, deploying broadband-capable infrastructure to an area lacking Internet access with speeds of 768 kbps/200 kbps will satisfy a greater portion of a carrier's public service obligation than deploying to areas with some level of non-broadband Internet access (i.e., a location that is served by Internet access at 768 kbps/200 kbps but not 4 Mbps/1 Mbps). Deploying to a location unserved by 768 kbps/200 kbps will satisfy $775 of a carrier's Phase I obligations. Deploying to a location served by 768 kbps/200 kbps but unserved by 3 Mbps/768 kbps, as specified above, will satisfy $550 of a carrier's Phase I obligation.

19. As in the first round of Phase I, when electing to accept support, the carrier must provide a list identifying the census blocks and wire centers in which it plans to use support. In addition, the carrier must specify how many $775 locations and how many $550 locations it will deploy to. The carrier must certify that that deployment funded through Phase I incremental support will occur in areas shown on the most current version of the National Broadband Map (data as of June 2012) as unserved by fixed Internet access with a minimum speed of 3 Mbps/768 kbps or that the carrier is challenging the National Broadband Map's designation, and that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed Internet access with a minimum speed of 3 Mbps/768 kbps. The carrier must also certify that its current capital improvement plan did not already include plans to complete broadband deployment to that area within the next three years, and that Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligations.

20. As a change from the first round of Phase I, and as described above, the carrier must additionally make the following certifications regarding locations that it seeks to count to satisfy Phase I deployment obligations. The carrier must certify to the best of its knowledge that no locations are the subject of funding under BIP or BTOP for projects that will provide Internet access with speeds of at least 3 Mbps/768 kbps. If a carrier seeks to count locations in its own service territory that are shown on the current version of the National Broadband Map (data as of June 2012) as served 3 Mbps/768 kbps, the carrier must certify that those locations are served through a copper-fed DSLAM. If the carrier seeks to satisfy any of its obligations by deploying to locations served by 768 kbps/200 kbps but not 3 Mbps/768 kbps Internet service, it must certify that it has committed to all projects or routes to locations unserved by 768 kbps/200 kbps that can economically be built with $775 in Connect America funds plus an equal amount of non-Connect America carrier capital expenditure funding, and that it has prioritized funded routes so as to maximize the number of newly served locations that are currently unserved by Internet access with speeds of 768 kbps/200 kbps.

21. The buildout obligations mirror those in the first round of Phase I. A carrier accepting Phase I support must complete deployment of broadband-capable infrastructure to two-thirds of the required number of locations within two years and must complete deployment to all required locations within three years. As a condition of this support, a carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

22. Phase I funding recipients will report that their networks meet the above standards through a process of self-certification. We note that the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and Office of Engineering & Technology have not specified a methodology for testing the performance of a funding recipient's broadband-capable network. As Phase I incremental support is designed to provide one-time support for deployment to specific locations, we now conclude that the potential effort to implement a testing regime for Phase I incremental support recipients would exceed any marginal benefit that is gained as compared to self-certification. To the extent there are any issues with broadband performance, the consumer complaint process will help to inform the Commission of such instances.

23. *Confidentiality.* The Commission sought comment on whether Phase I elections should be afforded confidentiality. We now decide that Phase I elections in the second round should not be treated as confidential. We strongly encourage Phase I recipients to discuss their elections with Commission staff at least 15 days prior to the election deadline in order to ensure facial compliance with the filing requirements. While these discussions and documents related to them may be afforded confidentiality, the finalized elections must be filed publicly. Public disclosure is generally preferred, especially when the use of public funds is at issue. Furthermore, we find that the competitive harm to carriers from this disclosure is likely minimal. Indeed, not all carriers requested confidentiality for first round Phase I filings.

24. *Challenge Process.* In the *Phase I FNPRM,* the Commission proposed conducting a challenge process whereby parties could challenge the status of census blocks as shown on the National Broadband Map. We conclude that such a challenge process would improve the accuracy and efficacy of a second round of Phase I support, allowing support to be appropriately targeted to unserved areas consistent with our overarching goals for Phase I. Consistent with the guidance contained herein, we delegate to the Bureau authority to implement the challenge process.

25. Based on our review of the record, we are persuaded that the appropriate way to conduct a Phase I challenge process is to require price cap carriers first to identify the specific census

blocks and wire centers where they propose to deploy broadband-capable infrastructure with second round Phase I support. This will reduce the burden on parties both making and responding to challenges, and the administrative burden of processing such challenges. The price cap carriers should identify where they intend to build based on the current version of the National Broadband Map (i.e., the map reflecting data as of June 2012).

26. In the first round of Phase I, several carriers initially sought to meet their Phase I deployment commitments in areas that were already served or failed to identify enough census blocks to account for the required number of newly served locations. To ensure that carriers properly identify the blocks that will be subject to the challenge process, we strongly encourage those electing funding to submit their intended elections and planned buildout locations by census block to the Bureau on a confidential basis at least 15 days in advance of the acceptance deadline. The Bureau will evaluate the submissions to determine facial compliance with our requirements and will work with Phase I recipients to resolve any possible inconsistencies prior to the acceptance deadline. To the extent carriers do not avail themselves of this procedure, they run the risk of having their respective commitment amounts reduced, to the extent they fail to identify enough census blocks to account for the required number of new locations; carriers will not be permitted to amend their elections once the challenge process has commenced to add additional census blocks. Once the Bureau completes its review of the elections made on the deadline, it will publicly announce the acceptance amounts and census blocks for planned buildout. The challenge process then will be conducted, as described below.

27. When electing to receive second round Phase I support, price cap carriers must provide a list of census blocks unserved by 3 Mbps/768 kbps Internet access in which they intend to deploy to meet their buildout obligations. In submitting such a list, price cap carriers may argue no providers in the area are offering broadband, challenging the National Broadband Map's designation of a census block as being served by 3 Mbps/768 kbps Internet access or as being served by 768 kbps/200 kbps Internet access. When making an election to accept Phase I support, a price cap carrier may condition all or a portion of its acceptance on its challenge being granted. To eliminate the incentive to make blanket challenges in areas where the carrier has little intent to serve, however, if a carrier challenges the designation of a census block as served on the National Broadband Map and that challenge is ultimately granted, it will be obligated to deploy in that particular census block, absent extraordinary circumstances beyond its control.

28. Following the price cap carriers' initial submissions identifying where they intend to serve and which census blocks they are challenging the National Broadband Map classification as served, the Bureau will publish a list of all census blocks that carriers propose to serve to meet their Phase I obligations. Interested parties will have 30 days to challenge this list by demonstrating that the block is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher. Carriers will then be given an additional 30 days to respond to these challenges. To the extent a more recent National Broadband Map becomes available in this time period, interested parties are free to bring new information regarding availability as shown on the map to the Bureau's attention.

29. All filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence. The Bureau should not consider conclusory assertions without supporting evidence that a census block's designation as served or unserved should be changed. In cases where another provider contests the price cap carrier's intention to serve, the Bureau may consider such evidence as a signed certification from an officer of the provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers in that particular census block. Such a certification could be accompanied by current customer billing records, appropriately redacted to preserve customer privacy. In cases where the price cap carrier seeks to contest the classification of a census block on the map as served by broadband, the Bureau may consider such evidence as statements from residents of an area noting that they have attempted and failed to receive service from a putative unsubsidized competitor. The Bureau may also consider FCC Form 477 data in evaluating whether a provider is providing broadband in a particular census block. Where the Bureau finds it more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map, the Bureau will deem that census block as served or unserved, as appropriate, for the purposes of Connect America Phase I.

30. *Reporting Requirements.* We adopt our two proposals regarding the reporting requirements for Phase I of Connect America. These changes apply both to support already accepted in the first round of Phase I and support that will be accepted in the second round of Phase I. We also adopt measures to ensure greater transparency for the public about how Phase I funds are being used, in response to a commenter's suggestions.

31. First, in their two- and three-year milestone certifications, recipients of Phase I support must provide geocoded latitude and longitude location information, along with census block and wire center information, for each location the carrier intends to count toward its deployment requirement. As recipients should know by that point in time to which locations they are deploying in order to satisfy their buildout requirements, it is unlikely this additional reporting requirement will substantially burden Phase I recipients. While the additional burden will be minimal, requiring geocoded location information will considerably improve the Commission's ability to ensure accountability of Phase I funds. We direct the Bureau to work with USAC to publish a map indicating the location of projects funded with Phase I incremental support.

32. Second, in the event a recipient intends to deploy to areas other than those identified in its initial acceptance, it is permitted (but not required) to make a supplemental filing providing updated deployment plans at any time. Compliance with the deployment requirements will be determined based on the recipient's final deployment certification. As this interim reporting is completely optional, it should not unnecessarily burden any recipient that decides to file such reports.

33. In addition, we require carriers that elect to take Phase I funding under these revised rules to report annually on the dollar amount of investment they have made in the prior calendar year, using Phase I incremental support, beginning with the annual report due July 1, 2015. In their annual reports required under section 54.313, recipients should provide the total amount of capital funding expended in the previous year in meeting Connect America Phase I deployment obligations, accompanied by a list of census blocks indicating where funding was spent.

34. *Alternative Proposals.* We are not persuaded by arguments we should make more fundamental changes to Phase I. The Commission is implementing a multi-faceted strategy to

expand the availability of broadband, both fixed and mobile, throughout the nation. We decline at this time to revisit the relative allocation of funding among the various programs designed to achieve our broadband objectives for the nation. Phase I was limited to price cap carriers in order to address a specific issue: over 80 percent of unserved Americans live in price cap territories. The most direct and expedient way to address that issue is to provide a discrete amount of support to price cap carriers that will leverage their private capital in exchange for a clearly defined obligation to deploy to those unserved locations in the near term. A second round of Phase I can be quickly implemented in the months ahead. In contrast, other proposals, such as developing an auction by which to distribute Phase I funds, would take longer to implement. Thus, Phase I as refined today is a reasonable step forward in achieving our goal of rapidly deploying broadband-capable infrastructure to unserved Americans living in price cap territories.

III. Procedural Matters

A. Paperwork Reduction Act

35. This document contains modified information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

36. In this present document, we have assessed the effects of requiring carriers to submit new elections for the second round of Connect America Phase I support, as well as requiring geocoded location information for all Phase I certifications, and find that it will not impact businesses with fewer than 25 employees. Only price cap carriers or rate-of-return carriers affiliated with price cap carriers are eligible for Phase I support. All such entities have more than 25 employees.

B. Final Regulatory Flexibility Certification

37. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

38. This document modifies and clarifies the Phase I rules adopted by the Commission in *USF/ICC Transformation Order.* These modifications and clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order.* Therefore, we certify that the requirements adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this final certification, in a report to Congress pursuant to SBREFA. In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

C. Congressional Review Act

39. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. Ordering Clauses

40. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201(b), 214, 218–220, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 154(j), 155, 201(b), 214, 218–220, 254, 1302, that this Report and Order *is adopted,* effective July 26, 2013, except for §§ 54.312(c)(4) through (c)(6), 54.312(c)(8), and 54.313(b), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

41. *It is further ordered* that authority to implement a Connect America Phase I challenge process *is delegated* to the Wireline Competition Bureau, consistent with paragraphs 24–29 of this Report and Order.

42. *It is further ordered* that authority to set the timeline for a second round of Phase I support, including certifications related to the second round of Connect America Phase I, *is delegated* to the Wireline Competition Bureau.

43. *It is further ordered* that part 54 of the Commission's rules, 47 CFR part 54, is *amended* as set forth below, and such rule amendments shall be effective July 26, 2013, except for §§ 54.312(c)(4) through (c)(6), 54.312(c)(8), and 54.313(b), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

44. *It is further ordered* that the Commission *shall send* a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

45. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 is revised to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.312 by revising paragraph (b) introductory text and adding paragraph (c) to read as follows:

§ 54.312 Connect America Fund in Price Cap Territories—Phase I.

* * * * *

(b) *Incremental Support in 2012.* From January 1, 2012, to December 31, 2012, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows.

* * * * *

(c) *Incremental Support in 2013.* From January 1, 2013, to December 31, 2013, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows:

(1) For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's high-cost proxy model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.

(2) An eligible telecommunications carrier accepting incremental support must deploy broadband to a number of unserved locations, shown as unserved by fixed Internet access with speeds of at least 768 kbps downstream and 200 kbps upstream on the then-current version of the National Broadband Map, equal to the amount of incremental support it accepts divided by $775.

(3) An eligible telecommunications carrier must accept funding pursuant to paragraph (c)(2) of this section before it may accept funding pursuant to paragraph (c)(3) of this section. If an eligible telecommunications carrier has committed to deploy to all locations eligible for support under paragraph (c)(2) of this section on routes or projects that can economically be built with $775 in Connect America funding for each location unserved by 768 kbps downstream and 200 kbps upstream plus an equal amount of non-Connect America carrier capital expenditure funding, but the carrier has not fully utilized its allotted funding, it may also count towards its deployment obligation locations shown as unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream equal to the amount of remaining incremental support divided by $550.

(4) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, the Administrator, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept, the number of locations at the $775 amount, the number of locations at the $550 amount, and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 75 days of being notified of any incremental support for which it would be eligible.

(5) Along with its notification, an eligible telecommunications carrier accepting incremental support must submit the following certifications:

(i) The locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband at the speeds specified in paragraph (c)(2) or (c)(3) of this section provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map or that it is challenging the National Broadband Map's designation of that census block under the challenge process in paragraph (c)(7) of this section;

(ii) To the best of the carrier's knowledge, the locations are, in fact, unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream, or 768 kbps downstream and 200 kbps upstream, as appropriate;

(iii) The carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation;

(iv) Incremental support will not be used to satisfy any merger commitment or similar regulatory obligation; and

(v) The carrier has undertaken due diligence to determine the locations in question are not within the service area of either Broadband Initiatives Program or the Broadband Technology Opportunities Program projects that will provide Internet access with speeds of at least 3 Mbps downstream and 768 upstream.

(6) An eligible telecommunications carrier deploying to locations unserved by 3 Mbps downstream and 768 kbps upstream under paragraph (c)(3) of this section must also certify that it has prioritized its planned projects or routes so as to maximize the deployment of broadband-capable infrastructure to locations lacking Internet access with speeds of 768 kbps downstream and 200 kbps upstream.

(7) A person may challenge the designation of a census block as served or unserved by a certain speed as shown on the National Broadband Map. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as served by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, that locations in that census block will be treated as served by broadband and therefore ineligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as served by Internet service with speeds of 768 kbps downstream and 200 kbps upstream, but unserved by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, locations in that census block will be treated as served by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as unserved by Internet service with speeds of 768 kbps downstream and 200 kbps upstream, locations in that census block will be treated as unserved by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(2) of this section.

(8) If no entity other than the carrier or its affiliate provides Internet service with speeds of 3 Mbps downstream and 768 kbps upstream or greater as shown on the National Broadband Map or as determined by the process described in paragraph (c)(7), the carrier may satisfy its deployment obligations at a location shown by the National Broadband Map as being served by that carrier or its affiliate with such service by certifying that it is the only entity providing such service, that the location does not actually receive speeds of 3 Mbps downstream and 768 kbps upstream, and the location is served through a copper-fed digital subscriber line access multiplexer. The carrier must specifically identify such locations in its election. Such locations will be treated the same as locations under paragraph (c)(3) of this section.

(9) An eligible telecommunications carrier must complete deployment of broadband-capable infrastructure to two-thirds of the required number of locations within two years of providing notification of acceptance of funding, and must complete deployment to all required locations within three years. To satisfy its deployment obligation, the eligible telecommunications carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

■ 3. Amend § 54.313 by revising paragraph (b) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(b) In addition to the information and certifications in paragraph (a) of this section:

(1) Any recipient of incremental Connect America Phase I support pursuant to § 54.312(b) and (c) shall provide:

(i) In its next annual report due after two years after filing a notice of acceptance of funding pursuant to § 54.312(b) and (c), a certification that the company has deployed to no fewer than two-thirds of the required number of locations; and

(ii) In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(b) and (c), a certification that the company has deployed to all required locations and that it is offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

(2) In addition to the information and certifications required in paragraph (b)(1) of this section, any recipient of incremental Connect America Phase I support pursuant to § 54.312(c) shall provide:

(i) In its annual reports due after one, two, and three years after filing a notice of acceptance of funding pursuant to § 54.312(c), a certification that, to the best of the recipient's knowledge, the locations in question are not receiving support under the Broadband Initiatives Program or the Broadband Technology Opportunities Program for projects that will provide broadband with speeds of at least 4 Mbps/1 Mbps; and

(ii) In its annual reports due after one, two, and three years after filing a notice of acceptance of funding pursuant to § 54.312(c), a statement of the total amount of capital funding expended in the previous year in meeting Connect America Phase I deployment obligations, accompanied by a list of census blocks indicating where funding was spent.

* * * * *

[FR Doc. 2013–15297 Filed 6–25–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 208, 216, and 247

RIN 0750–AH91

Defense Federal Acquisition Regulation Supplement: Requirements for Acquisitions Pursuant to Multiple Award Contracts (DFARS Case 2012–D047)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 863 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110–417). Section 863(f) repeals redundant provisions of section 803 of the NDAA for FY 2001, which was implemented by a previous DFARS case, 2001–D017.

DATES: *Effective Date:* June 26, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Fernell Warren, telephone 571–372–6089.

SUPPLEMENTARY INFORMATION:

I. Background

On October 25, 2002, a final DFARS rule was published (67 FR 65505) which implemented section 803 of the NDAA for FY 2002 (Pub. L. 107–107; 10 U.S.C. 2304 note). The purpose of section 803 was to achieve savings in expenditures through the use of competition in the purchase of services pursuant to multiple award contracts.

Increasing savings in expenditures through competition is a continuing goal of the Federal Government, and as such, section 863 of the NDAA for FY 2009 required that the Federal Acquisition Regulation (FAR) be amended to require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple-award contracts. Final publication of FAR Case 2007–012 (March 2, 2012), Requirements for Acquisitions Pursuant to Multiple-Award Contracts, satisfied this requirement of section 863.

The statute also repeals section 803 of the NDAA for FY2002 as a redundant provision. As such, this final rule reconciles and removes from the DFARS all obsolete references to section 803 of the NDAA for FY2002 (Pub. L. 107–107; 10 U.S.C. 2304 note) now implemented in the FAR.

This final rule makes the following changes:

- Modify 208.404(a)(i) to delete the reference to 208.405–70(c)(2) which is redundant, and to change $150,000 to the simplified acquisition threshold to reconcile with the FAR.
- Relocate the reference to the provisions prescribed at 215.371–6 and 215.408(4) from 208.405–70(d) to 208.404 in order to retain the cross reference to the provisions that remain applicable.
- Delete 208.405–70 because it is redundant with FAR 8.405. Competitive requirements when using Federal Supply Schedules are now fully implemented in the FAR.
- Modify 208.7400(d) to delete an obsolete reference to 208.405–70.
- Renumber 216.501 to 216.501–2–70 to reconcile with FAR using the correct numbering convention.
- Delete 216.501–1. Only ''Multiple-award contract'' was defined and it was only used in 216.505–70 which is also deleted in this rule.
- Renumber 216.501–2(a) to 216.501–2–70(b) to reconcile with FAR.
- Delete 216.505–70(a), (b), (c), (d)(1), (2), (4), and (5) which are redundant. Competitive requirements for orders under multiple-award contracts are now fully implemented in the FAR at 16.500(d) and 16.505(b). Retain content of 216.505–70(d)(3), renumbered as 216.505–70, which remains applicable under the stated circumstances.
- Modify 247.271–3(f) to change the reference from FAR 16.505(a)(4) to 16.504(a)(4)(vii) to reconcile with FAR numbering. FAR 16.505(a)(4) was not changed by FAR Case 2007–012, but no longer discusses oral orders.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

Publication of proposed regulations, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it simply reconciles and removes all obsolete references to section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107; 10 U.S.C. 2304 note) from the DFARS. These requirements affect only the internal operating procedures of the Government, and the rule does not create a significant cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 208, 216, and 247

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR parts 208, 216, and 247 as follows:

■ 1. The authority citation for parts 208, 216, and 247 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 208.404 by—

■ a. Revising paragraph (a)(i); and

■ b. Adding a new paragraph (a)(iv).

The text of the revisions and additions read as follows:

208.404 Use of Federal Supply Schedules.

(a)(i) If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the procedures at 215.371 apply.

* * * * *

(iv) Use the provisions at 252.215–7007, Notice of Intent to Resolicit, and 252.215–7008, Only One Offer, as prescribed at 215.408(3) and 215.408(4), respectively.

208.405–70 [Removed]

■ 3. Section 208.405–70 is removed.

208.7400 [Amended]

■ 4. Amend section 208.7400, paragraph (d), by removing ''established in accordance with FAR 8.405 and 208.405–70; or'' and adding ''established in accordance with FAR 8.405; or'' in its place.

PART 216—TYPES OF CONTRACTS

216.501 [Redesignated as 216.501–2–70]

■ 5. Redesignate section 216.501 as section 216.501–2–70.

■ 6. In newly redesignated section 216.501–2–70, add paragraph (b) to read as follows:

216.501–2–70 General.

* * * * *

(b) See 217.204(e)(i) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

216.501–1 and 216.501–2 [Removed]

■ 7. Remove sections 216.501–1 and 216.501–2.

■ 8. Revise section 216.505–70 to read as follows:

216.505–70 Orders under multiple award contracts.

If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the contracting officer shall follow the procedures at 215.371.

PART 247—TRANSPORTATION

247.271–3 [Amended]

■ 9. Amend section 247.271–3, paragraph (f), by removing ''for placing oral orders in accordance with FAR 16.505 (a)(4), document the oral orders'' and adding ''for placing oral orders in accordance with FAR 16.504(a)(4)(vii), document the oral orders'' in its place.

[FR Doc. 2013–15270 Filed 6–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective Date:* June 26, 2013.

FOR FURTHER INFORMATION CONTACT: Mrs. Kortnee Stewart, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6100; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. Corrects typographical error at 225.7902–5(b)(1)(i).

2. Corrects the definition of ''export'' at 252.225–7047.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.7902–5 [Amended]

■ 2. Section 225.7902–5(b)(1)(i) is amended by removing ''252.204–7008'' and adding ''252.204–7048'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7047 [Amended]

■ 3. The definition of ''Export'' in section 252.225–7047(a) is amended by removing ''United Kingdom Community'' and adding ''United Kingdom Community and the Australia Community'' in its place.

[FR Doc. 2013–15271 Filed 6–25–13; 8:45 am]

BILLING CODE 6820–ep–P

Proposed Rules

Federal Register

Vol. 78, No. 123

Wednesday, June 26, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0504; Airspace Docket No. 13–AEA–3]

RIN 2120–AA66

Proposed Establishment, Modification and Cancellation of Air Traffic Service (ATS) Routes; Northeast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify two jet routes, six VOR Federal airways, and three area navigation routes; to establish six area navigation (RNAV) routes; and to cancel two VOR Federal airways in the northeast United States. The FAA is proposing this action due to the scheduled decommissioning of the Lake Henry, PA, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) facility which provides navigation guidance for portions of the affected routes. This action would enhance the safety and efficient management of aircraft within the National Airspace System.

DATES: Comments must be received on or before August 12, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–0504 and Airspace Docket No. 13–AEA–3 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0504 and Airspace Docket No. 13–AEA–3) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0504 and Airspace Docket No. 13–AEA–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Lake Henry, PA (LHY) VORTAC facility is currently out of service. A determination has been made to permanently decommission the facility due to projected signal degradation from a planned power line nearby. Additionally, the LHY VORTAC is not on the list of VORs planned for retention in the VOR Minimum Operational Network (MON). As a result, the ATS routes that utilize the LHY VORTAC must be amended. The affected routes are: Jet route J–36 and VOR Federal airways V–58, V–93, V–106, V–126, V–149, V–153, and V–408. With the decommissioning of the LHY VORTAC, ground-based navigation aid (NAVAID) coverage is insufficient to enable the continuity of all the airways. Therefore, the proposed modifications to VOR Federal airways V–58, V–93, V–106, V–126, V–149, and V–408 would result in a gap in the route structures. Route segments supported by other NAVAIDs would be retained. Each of these airways would have an RNAV T-route overlying its original track. A portion of J–36 would also be deleted and replaced by Q–436. Although not directly affected by the LHY VORTAC decommissioning, J–68 would be amended to support the transition to RNAV and reduce chart clutter as noted below.

The FAA also plans to establish a new Waypoint (WP)/Intersection (INT), named LAAYK, within 0.01 seconds of latitude of the LHY VORTAC's position. The LAAYK WP (defined by lat. 41°28′33″ N., long. 075°28′57″ W.; or the intersection of the Wilkes-Barre, PA 037°T/047°M and Sparta, NJ 300°T/311°M radials) would be utilized in a number of the routes described in this proposal.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend jet routes J–36 and J–68; VOR Federal airways V–58, V–93, V–106, V–126, V–149, V–408; and RNAV routes T–212, T–291 and T–295. The FAA also proposes to establish new RNAV routes Q–436, Q–438, Q–440, T–216, T–218 and T–221. In addition, VOR Federal airways V–153 and V–449 would be cancelled. The scheduled decommissioning of the LHY VORTAC facility has made this action necessary.

The proposed route changes are outlined below.

J–36: J–36 currently extends between Mullan Pass, ID (MLP) and Sparta, NJ (SAX). The FAA proposes to eliminate the part of the route between Flint, MI (FNT) and SAX. A new RNAV route, Q–436, is proposed, as described below, that would replace the cancelled segment. Most aircraft utilizing J–36 are RNAV equipped, so replacing the above J–36 segment with an RNAV route would further the transition to an RNAV route structure and support the NextGen initiative.

J–68: J–68 currently extends between Gopher, MN (GEP) and Dunkirk, NY (DKK); and then between Hancock, NY (HNK) and Nantucket, MA (ACK). Although J–68 is not directly affected by the planned LHY VORTAC decommissioning, the FAA proposes to cancel that part of J–68 that extends between FNT and DKK. J–68 overlies J–36 between FNT and DKK. The proposed Q–436, Q–438 and Q–440 (see below), as well as other jet routes, provide alternative routings through the area. Therefore cancelling the segments of J–68 between FNT and DKK would support the transition to RNAV and reduce chart clutter. The portion of J–68 between Hancock, NY and Nantucket, MA would be retained as currently published.

Q–436: This proposed new route would extend between the EMMMA, MI, fix and the COATE, NJ, fix (approximately 8 NM NW of Sparta). Q–436 would replace the cancelled segments of J–36 and that part of J–68 that extends between FNT and DKK. The proposed routing of Q–436 from the COATE, NJ, INT/WP to a point southeast of DKK is an exact overlay of the segments of J–36 proposed for cancellation (see above). From this point Q–436 would continue westbound to provide a more direct routing for aircraft transiting from the New York area landing in Chicago, IL.

Q–438 and Q–440: During the development of Q–436, two additional Q-routes (Q–438 and Q–440) were designed to segregate Chicago O'Hare arrivals from other westbound traffic. Q–438 would extend between the RUBYY, MI, WP and the RAAKK, NY, WP. Q–440 would extend between the SLLAP, MI, WP and the RAAKK, NY, WP. From a point southeast of DKK, Q–438 and Q–440 would diverge from Q–436 to provide segregation between Chicago arrivals and aircraft overflying the Chicago area. Although not directly related to the LHY VORTAC decommissioning, these additional Q-routes would reduce ATC sector complexity, allow overflight aircraft to be cleared to their cruising altitude more expeditiously and provide a more direct routing to destinations west of Chicago; therefore, they are included in this proposed rule.

V–58: V–58 currently extends between the intersection of the Franklin, PA, (FKL) 175° and Clarion, PA, (CAV) 222° radials and ACK. The V–58 segments between Williamsport, PA (FQM) and the HELON, NY, intersection (formed by the intersection of the Sparta, NJ, 018° and Kingston, NY, 270° radials) would be removed. Following this gap, the airway would resume its current track between HELON and ACK.

V–93: V–93 currently extends between Patuxent River, MD (PXT), and the United States/Canadian border, (near Princeton, ME [PNN]). As proposed, V–93 would extend between PXT and the new LAAYK INT. The segments between LAAYK, PA, and HELON, NY, would be deleted. The route would then resume its current track between HELON, NY, and the United States/Canadian Border.

V–106: V–106 currently extends between Johnstown, PA (JST), and Kennebunk, ME (ENE). V–106 would be realigned to the LAAYK INT in lieu of LHY and that portion of the airway between LAAYK and Barnes, MA (BAF) would be deleted. Following that gap, the airway would resume its currently published track between BAF and ENE. This change is proposed because other routings are available via other conventional airways (V–34 from WEETS, NY, to Pawling, NY (PWL) then V–405 to BAF). The change would also reduce chart clutter. As described below, T–212 would replace the deleted segments of V–106.

V–126: V–126 currently extends between the intersection of the Peotone, IL (EON), 053° and Knox, IN (OXI), 297° radials and Sparta, NJ. That portion of V–126 between Stonyfork, PA (SFK) and Sparta would be deleted. The proposed RNAV route T–218 would overlay the airway.

V–149: V–149 currently extends between the intersection of the Allentown, PA (FJC), 147° and Solberg, NJ (SBJ), 227° radials, through the FJC VORTAC and LHY VORTAC, then on to Binghamton, NY (CFB). V–149 would be modified by replacing the LHY VORTAC with the new LAAYK INT (formed by radials from the CFB and FJC VORTACs). In addition, V–149 currently utilizes the FJC 147°(M) radial to define the segment between the MAZIE fix and FJC. This radial is currently charted as ''unusable.'' Therefore, the FAA also proposes to remove that segment of V–149 between the MAZIE fix and FJC. The proposed T–221 would overlie this removed segment as described below.

V–153: V–153 currently extends between Lake Henry, PA, and Syracuse, NY (SYR). The FAA is proposing to remove V–153 in its entirety based on other available route alternatives and minimal usage by air traffic.

V–408: V–408 currently extends between the intersection of the Martinsburg, WV (MRB), 058° and Modena, PA (MXE), 258° radials and the intersection of the Lake Henry, PA, 056° and Barnes, MA, 265° radials (i.e., the SAGES fix). As proposed, V–408 would terminate at Allentown, PA, and the segments between Allentown and SAGES would be deleted. The deleted portion would be replaced by a proposed extension of T–295, described below.

V–449: V–449 currently extends between Milton, PA (MIP), and Albany, NY (ALB). The FAA proposes to remove V–449 in its entirety. With the LHY decommissioning, the remainder of the airway will not pass flight inspection. A proposed extension of T–291 would replace this airway, as described below.

T–212: T–212 currently extends between the WEARD, NY, fix and the Putnam, CT, VOR/DME (PUT). The FAA proposes to extend T–212 to the west by adding segments between the existing RASHE, PA, fix (formed by the intersection of radials from the Selinsgrove, PA, and the Philipsburg, PA, VORTACs) and WEARD. As proposed, T–212 would replace the cancelled segment of V–106 between the LAAYK and WEETS fixes.

T–216: T–216 is a proposed new route that would extend between the Philipsburg, PA, VORTAC (PSB) and the Nantucket, MA, VOR/DME (ACK). T–216 would overlie V–58 between PSB and ACK, and would also replace the cancelled portion of V–93 between the LAAYK INT and the HELON fix.

T–218: T–218 is a proposed new route that would extend between the Stonyfork, PA (SFK), VOR/DME and the Sparta, NJ, VORTAC (SAX). T–218

would replace V–126 between SFK and SAX.

T–221: T–221 is a proposed new route that would extend between the MAZIE, PA, fix and the Albany, NY, VORTAC (ALB). T–221 would overlie V–149 between the MAZIE fix and Binghamton, NY (CFB).

T–291: is a newly established route to become effective August 22, 2013 (78 FR 29615, May 21, 2013), extending between the LOUIE, MD, fix and the Harrisburg, PA, VORTAC (HAR). After T–291 becomes effective, this proposal would further extend the route northward between HAR and ALB. The extended route would overlie V–31 to Selinsgrove, PA (SEG), then proceed direct to MIP, and from MIP it would replace V–449 by way of the LAAYK WP, terminating at ALB.

T–295: T–295 is a newly established route to become effective August 22, 2013 (78 FR 29615, May 21, 2013), extending between the LOUIE, MD, fix and the Lancaster, PA, VORTAC (LRP). After T–295 becomes effective, this proposal would further extend the route northward to the Princeton, ME, VOR/DME (PNN). T–295 would overlie V–93 from LRP through Wilkes-Barre, PA (LVZ), to the LAAYK WP and then would replace V–408 from LAAYK to the SAGES, NY, INT/WP where it would turn and overlie V–292 until the SASHA, MA, INT/WP. T–295 would then continue northbound overlying V–93 to PNN.

Where new navigation aid radials are cited in a proposed route description, below, both True and Magnetic degrees are shown. Otherwise, only True degrees are stated.

Jet routes are published in paragraph 2004; high altitude RNAV routes (Q) are published in paragraph 2006; VOR Federal airways are published in paragraph 6010(a); and low altitude RNAV routes (T) are published in paragraph 6011, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The jet routes, Q routes, VOR Federal airways and T routes listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic and to advance the use of Performance Based Navigation technology.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012 and effective September 15, 2012, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–36 [Amended]

From Mullan Pass, ID, via Great Falls, MT; Dickinson, ND, via Fargo, ND; Gopher, MN; Nodine, MN; INT Nodine 116° and Badger, WI, 271° radials; Badger; INT Badger 086° and Flint, MI, 278° radials; to Flint.

J–68 (Amended)

From Gopher, MI, INT Gopher 109° and Dells, WI, 310° radials; Dells; Badger, WI; INT Badger 086° and Flint, MI, 278° radials; to Flint. From Hancock, NY; INT Hancock 082° and Putnam, CT, 293° radials; Putnam; Providence, RI; to Nantucket, MA.

* * * * *

Paragraph 2006 United States Area Navigation Routes

Q–436 EMMMA, MI to COATE, NJ [New]

EMMMA, MI	FIX	(Lat. 42°53′04″ N., long. 084°34′50″ W.)
YARRK, (Canada)	WP	(Lat. 42°31′22″ N., long. 081°16′06″ W.)
CHAAP, (Canada)	WP	(Lat. 42°30′19″ N., long. 080°40′57″ W.)
RAAKK, NY	WP	(Lat. 42°23′59″ N., long. 078°54′39″ W.)
HERBA, NY	WP	(Lat. 42°14′35″ N., long. 078°16′28″ W.)
LAAYK, PA	WP	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
COATE, NJ	FIX	(Lat. 41°08′10″ N., long. 074°41′43″ W.)

Excluding the airspace in Canada.

Q438 RUBYY, MI to RAAKK, NY [New]

RUBYY, MI	WP	(Lat. 43°01′04″ N., long. 084°35′16″ W.)
Flint, MI (FNT)	VORTAC	(Lat. 42°58′00″ N., long. 083°44′49″ W.)
TWIGS, MI	WP	(Lat. 42°48′34″ N., long. 082°33′10″ W.)
JAAJA, (Canada)	WP	(Lat. 42°40′00″ N., long. 081°16′00″ W.)
FARGN, (Canada)	WP	(Lat. 42°36′42″ N., long. 079°47′18″ W.)

RAAKK, NY	WP	(Lat. 42°23′59″ N., long. 078°54′39″ W.)
Excluding the airspace in Canada.		

Q440 SLLAP, MI to RAAKK, NY [New]

SLLAP, MI	WP	(Lat. 43°27′00″ N., long. 084°56′20″ W.)
Flint, MI (FNT)	VORTAC	(Lat. 42°58′00″ N., long. 083°44′49″ W.)
TWIGS, MI	WP	(Lat. 42°48′34″ N., long. 082°33′10″ W.)
JAAJA, (Canada)	WP	(Lat. 42°40′00″ N., long. 081°16′00″ W.)
FARGN, (Canada)	WP	(Lat. 42°36′42″ N., long. 079°47′18″ W.)
RAAKK, NY	WP	(Lat. 42°23′59″ N., long. 078°54′39″ W.)
Excluding the airspace in Canada.		

* * * * *

Paragraph 6010 Domestic VOR Federal Airways

V–58 [Amended]

From INT Franklin, PA, 175° and Clarion, PA, 222° radials, via INT Clarion 222° and Philipsburg, PA, 272° radials; Philipsburg; to Williamsport, PA. From INT Sparta, NJ 018°T/029°M and Kingston, NY, 270°T/282°M radials; Kingston; INT Kingston 095° and Hartford, CT, 269° radials; Hartford; Groton, CT; Sandy Point, RI; to Nantucket, MA. The airspace within R–4105 is excluded during times of use.

V–93 [Amended]

From Patuxent River, MD, INT Patuxent 013° and Baltimore, MD, 122° radials; Baltimore; INT Baltimore 004° and Lancaster, PA, 214° radials; Lancaster; Wilkes-Barre, PA; to INT Wilkes-Barre 037°T/047°M and Sparta, NJ 300°T/311°M radials. From INT Sparta 018°T/029°) and Kingston, NY, 270°T/282°M radials; Kingston; Pawling, NY; Chester, MA, 12 miles 7 miles wide (4 miles E and 3 miles W of centerline); Keene, NH; Concord, NH; Kennebunk, ME; INT Kennebunk 045° and Bangor, ME, 220° radials; Bangor; Princeton, ME; to INT Princeton 057° radial and the United States/Canadian border.

V–106 [Amended]

From Johnstown, PA; INT Johnstown 068° and Selinsgrove, PA, 259° radials; Selinsgrove; INT Selinsgrove 067° and Wilkes-Barre, PA, 237° radials; Wilkes-Barre; to INT Wilkes-Barre 037°T/047°M and Sparta, NJ 300°T/311°M radials. From Barnes, MA; Gardner, MA; Manchester, NH; to Kennebunk, ME.

V–126 [Amended]

From INT Peotone, IL, 053° and Knox, IN, 297° radials; INT Knox 297° and Goshen, IN, 270°radials; Goshen; Waterville, OH; Sandusky, OH; Dryer, OH; Jefferson, OH; Erie, PA; Bradford, PA; to Stonyfork, PA.

V–149 [Amended]

From Allentown, PA; INT Allentown 358°(T)/008°(M) and Binghamton, NY 144°(T)/154°(M) radials; to Binghamton.

V–153 [Removed]

V–408 [Amended]

From INT Martinsburg, WV, 058° and Modena, PA, 258° radials; Modena; Pottstown, PA; East Texas, PA; to Allentown, PA.

V–449 [Removed]

* * * * *

Paragraph 6011 United States Area Navigation Routes

T–212 RASHE, PA to Putnam, CT (PUT) [Amended]

RASHE, PA	FIX	(Lat. 40°40′36″ N., long. 077°38′39″ W.)
Selinsgrove, PA (SEG)	VORTAC	(Lat. 40°47′27″ N., long. 076°53′03″ W.)
DIANO, PA	FIX	(Lat. 41°00′02″ N., long. 076°13′34″ W.)
Wilkes Barre, PA (LVZ)	VORTAC	(Lat. 41°16′22″ N., long. 075°41′22″ W.)
LAAYK, PA	WP	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
WEETS, NY	FIX	(Lat. 41°51′27″ N., long. 074°11′52″ W.)
NELIE, CT	FIX	(Lat. 41°56′28″ N., long. 072°41′19″ W.)
Putnam, CT (PUT)	VOR/DME	(Lat. 41°57′20″ N., long. 071°50′39″ W.)

T–216 Philipsburg, PA (PSB) to Nantucket, MA (ACK) [New]

Philipsburg, PA (PSB)	VORTAC	(Lat. 40°54′59″ N., long. 077°59′34″ W.)
Williamsport, PA (FQM)	VOR/DME	(Lat. 41°20′19″ N., long. 076°46′30″ W.)
ELEXY, PA	FIX	(Lat. 41°25′54″ N., long. 076°07′35″ W.)
LAAYK, PA	WP	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
HELON, NY	FIX	(Lat. 41°40′03″ N., long. 074°16′50″ W.)
Kingston, NY (IGN)	VOR/DME	(Lat. 41°39′56″ N., long. 073°49′20″ W.)
MOONI, CT	FIX	(Lat. 41°37′53″ N., long. 073°19′20″ W.)
Hartford, CT (HFD)	VOR/DME	(Lat. 41°38′28″ N., long. 072°32′51″ W.)
Groton, CT (GON)	VOR/DME	(Lat. 41°19′49″ N., long. 072°03′07″ W.)
Sandy Point, RI (SEY)	VOR/DME	(Lat. 41°10′03″ N., long. 071°34′34″ W.)
Nantucket, MA (ACK)	VOR/DME	(Lat. 41°16′55″ N., long. 070°01′36″ W.)

The airspace within R–4105 is excluded during times of use.		

T–218 Stonyfork, PA (SFK) to Sparta, NJ (SAX) [New]

Stonyfork PA (SFK)	VOR/DME	(Lat. 41°41′43″ N., long. 077°25′12″ W.)
LAAYK, PA	WP	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
Sparta, NJ (SAX)	VORTAC	(Lat. 41°04′03″ N., long. 074°32′18″ W.)

T–221 MAZIE, PA to Binghamton, NY (CFB) [New]

MAZIE PA	FIX	(Lat. 40°19′20″ N., long. 075°06′35″ W.)
Allentown, PA (FJC)	VORTAC	(Lat. 40°43′36″ N., long. 075°27′17″ W.)
LAAYK, PA	WP	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
Binghamton, NY (CFB)	VORTAC	(Lat. 42°09′27″ N., long. 076°08′11″ W.)

T–291 LOUIE, MD to Albany, NY (ALB) [Amended]

LOUIE, MD	FIX	(Lat. 38°36′44″ N., long. 076°18′04″ W.)
BAABS, MD	WP	(Lat. 39°19′51″ N., long. 076°24′41″ W.)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08″ N., long. 077°04′10″ W.)
Selinsgrove, PA (SEG)	VORTAC	(Lat. 40°47′27″ N., long. 076°53′03″ W.)
Milton, PA (MIP)	VORTAC	(Lat. 41°01′24″ N., long. 076°39′55.W.)
MEGSS, PA	FIX	(Lat. 41°11′13″ N., long. 076°12′41″ W.)
LAAYK, PA	WP	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
Delancey, NY (DNY)	VOR/DME	(Lat. 42°10′42″ N., long. 074°57′25″ W.)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50″ N., long. 073°48′11″ W.)

T–295 LOUIE, MD to Princeton, ME (PNN) [Amended]

LOUIE, MD	FIX	(Lat. 38°36′44″ N., long. 076°18′04″ W.)
BAABS, MD	WP	(Lat. 39°19′51″ N., long. 076°24′41″ W.)
Lancaster, PA (LRP)	VORTAC	(Lat. 40°07′12″ N., long. 076°17′29″ W.)
Wilkes-Barre, PA (LVZ)	VORTAC	(Lat. 41°16′22″ N., long. 075°41′22″ W.)
LAAYK, PA	WP	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
SAGES, NY	FIX	(Lat. 42°02′46″ N., long. 074°19′10″ W.)
SASHA, MA	FIX	(Lat. 42°07′59″ N., long. 073°08′55″ W.)
Keene, NH (EEN)	VORTAC	(Lat. 42°47′39″ N., long. 072°17′30″ W.)
Concord, NH (CON)	VORTAC	(Lat. 43°13′11″ N., long. 071°34′32″ W.)
Kennebunk, ME (ENE)	VORTAC	(Lat. 43°25′32″ N., long. 070°36′49″ W.)
BRNNS, ME	FIX	(Lat. 43°54′09″ N., long. 069°56′43″ W.)
Bangor, ME (BGR)	VORTAC	(Lat. 44°50′30″ N., long. 068°52′26″ W.)
Princeton, ME (PNN)	VOR/DME	(Lat. 45°19′45″ N., long. 067°42′15″ W.)

Issued in Washington, DC, on June 20, 2013.

Ellen Crum,

Acting Manager, Airspace Policy & ATC Procedures Group.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2013–5]

Authentication of Electronic Signatures on Electronically Filed Statements of Account

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office (''Copyright Office'' or ''Office'') is reengineering certain processes in its Licensing Division to enable cable systems operating under the statutory license governing the secondary transmission of over-the-air television broadcast signals to file Statements of Account electronically. As part of that process, the Office plans to adopt an identity authentication process that will allow for the use of electronic

signatures. The Office proposes revisions to specific rules to account for the changes associated with the implementation of an electronic Statement of Account filing system and seeks public comment on the proposed process and regulatory changes to accommodate the use of electronic signatures.

DATES: Comments due July 26, 2013. Reply comments July 26, 2013.

ADDRESSES: All comments and reply comments shall be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/digsig.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, all comments must be uploaded in a single file in either the Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Andrea Zizzi, Office of the General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 111 of the Copyright Act (''Act''), title 17 of the United States Code (''Section 111''), provides cable operators with a statutory license to retransmit a performance or display of a work embodied in a primary transmission made by a television station licensed by the Federal Communications Commission (''FCC''). Cable system statutory licensees are required to file Statements of Account (''SOAs'') and pay royalty fees to the Copyright Office. SOAs contain information on a cable operator's channel line-ups and gross receipts for the sale of cable service to the public. Payments made under the cable statutory license are remitted semi-annually to the Office, which invests the royalties in United States Treasury securities pending distribution of the funds to those copyright owners who are entitled to receive a share of the fees.

Since 2007, the Copyright Office has been implementing plans to reengineer the workflow of its Licensing Division (''Division'') for the administration, processing, and recordkeeping of electronically filed SOAs and related documents. The goals of this ongoing effort are manifold: (1) To facilitate the timely processing of SOAs; (2) to enable the Division to better manage its royalty investment accounts; (3) to expedite the availability of SOAs and other records for public inspection; and (4) to better control costs for those who participate in the statutory licensing system.

One of the key reengineering efforts is to digitize the royalty fee collections process. The Office is in the process of configuring and deploying a commercial off the shelf (''COTS'') computer software package as part of an overall business process reengineering effort. The COTS package will support the development of an efficient electronic system for filing, managing, and retrieving Statements of Account, royalty payments, notices, amendments, and other documents related to the work of the Licensing Division. The COTS package will provide the Office with the capability to automate the reengineered processes and provide a platform for managing stakeholders' needs online. The Office has named the new electronic filing system ''eLi'' (''eLi'' or ''Electronic Licensing'').

Central to the success of eLi is the establishment of a robust identity authentication system for the preparation and electronic filing of SOAs. This authentication will be accomplished through an electronic signature process. An authentication system for electronic filings is necessary because: (1) It establishes the identity of the individual(s) preparing the form; (2) it establishes the identity of the individual charged with the responsibility of certifying and signing the SOA during a secure online session; (3) it creates an electronically signed record in a format that accurately reflects the information provided by the cable system as submitted at the time of the electronic signing; and (4) it helps protect digital documents from tampering. In establishing eLi, the Office must revise its regulations to allow for the use of electronic signatures as the means of verifying the identity of the individual signing the SOA [1] and linking that individual to a specific electronic record.[2] The Office requests comments on proposed regulations governing the electronic signature process for filing cable Statements of Account.

II. Background

A. Levels of Authentication

Today, cable companies may utilize a number of employees in the preparation of an SOA. The Office's regulations, however, require that the document be signed by a person of authority, *i.e.,* an owner, partner, or officer of the company who, by signing, certifies that the information in the SOA is complete and accurate. 37 CFR 201.17(3)(14). For eLi filings, the Office seeks to adopt an identity authentication method that will identify each person involved in the preparation of the SOA, authenticate the identity of the person certifying the statement by his or her electronic signature on the document, and secure the information provided in the certified document.

The Office of Management and Budget (''OMB'') manual, *E-Authentication Guidance for Federal Agencies,* [*OMB 04–04*], describes the four levels of identity assurance currently used for electronic transactions filed with the federal government that require authentication. In choosing which assurance level is appropriate to authenticate a particular kind of electronic government transaction, the agency must consider the risk factors involved and the level of security required for that transaction. Under the OMB framework, Level 1 provides the lowest security assurance and Level 4 provides the highest, with Levels 2 and 3 providing a mix of security and ease of access to protected documents.

Level 1 authentication methods do not require identity proofing, but they must provide some assurance that the party who electronically signed a protected document is the same individual who transmitted it. Level 1 methods allow a wide range of available authentication technologies to be employed and permit the use of any token methods of Levels 2, 3, or 4.

[1] *E-Authentication Guidance for Federal Agencies,* [*OMB 04–04*], § 1.3 (Dec. 16, 2003).

[2] According to Section 106(5) of the Electronic Signatures in Global and National Commerce Act (known as ''ESIGN''), an electronic signature is defined as ''an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.'' ESIGN, 15 U.S.C. 7006(5) (2000). Under Section 2 of the Uniform Electronic Transactions Act (UTEA), the term ''electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.'' Unif. Elec. Transactions Act § 2 (1999).

Successful authentication requires that the electronic signer prove, through a secure authentication protocol, that he or she controls the token. The method does not permit plain text passwords to be transmitted across a network, nor does it require cryptographic methods that block offline analysis by eavesdroppers. Thus, at Level 1, long-term shared authentication secrets may be revealed to verifiers.[3]

Level 2 provides single factor remote network authentication. Successful level 2 authentication requires that the individual prove, through a secure authentication protocol that utilizes approved cryptology, that he or she controls an access token, such as a password or a PIN number. This kind of authentication method is designed to prevent security threats such as eavesdropper and online guessing attacks. However, the single authentication token is vulnerable to compromise via replay, on-line guessing, and verifier impersonation.[4]

Level 3 identity authentication will provide appropriate security for authentication of electronic signatures on Statements of Account. Level 3 provides multi-factor remote network authentication. At this level, identity proofing procedures require verification of identifying materials and information. Level 3 authentication is based on proof of possession of a key or a one-time password through a cryptographic protocol. As the second step, it requires cryptographic strength mechanisms that protect the primary authentication token (secret key, private key or one-time password).[5]

Level 4 authentication generally applies only to those systems managing access to highly sensitive information. Level 4 is structured to provide the highest practical remote network authentication assurance. Level 4 authentication is based on proof of possession of a key through a cryptographic protocol. Only ''hard'' cryptographic tokens are allowed. Level 4 also requires strong cryptographic authentication of all parties and all sensitive data transfers between the parties.[6]

The Copyright Office has conducted an internal assessment of the protocols necessary to secure and certify electronically filed Statements of Accounts. The Office notes that SOAs are made readily available to the public for inspection, and has concluded that once filed, cable system SOAs and related documents do not contain highly sensitive or confidential information. Based upon these findings, the Office has determined that it need not implement the most exacting security protocol for the authentication of the electronic signatures, meaning that Level 4 would be unnecessarily burdensome, given the low security risk. At the same time, the Office has determined that it is necessary to implement an authentication mechanism that guarantees that a particular individual has performed a certain task. Unfortunately, neither Level 1 nor Level 2 authentication will provide sufficient ''proof'' to link an individual to a specific filing.

The Office does believe that Level 3 authentication methods are well suited for the authentication of electronic signatures on SOAs and related documents. Level 3 methods are utilized by financial institutions[7] and government agencies[8] that have found level 3 methods to provide sufficient security for their work products and operating environments. The Office believes that a two-step authentication process will provide the necessary balance between ensuring the security of the information provided by the cable operator in the SOA while allowing remote authentication of the identity of the individual who has legitimate access to sign and certify the SOA. ''Two-factor'' authentication, integral in the Level 3 security framework, provides the required level of confidence necessary to establish in a consistent and secure manner the connection between the signing individual and his/her action as it relates to electronically filed SOAs. Moreover, this level of identity authentication provides safeguards against fraud consistent with the criminal provisions under title 18 of the United States Code.[9]

There are different methods for implementing a ''two-factor'' Level 3 authentication process, and each has its strengths and weaknesses. In this category are key fobs,[10] digital certificates,[11] USB tokens,[12] smart

[3] *See Electronic Authentication Guideline,* NIST Publication 800–63–1, version 800–63–1 (December 2011) (''NIST Publication 800–63–1'') at vii, *http://csrc.nist.gov/publications/nistpubs/800–63–1/SP–800–63–1.pdf.*

[4] *Id.* at vii-viii.

[5] *Id.* at viii.

[6] *Id.*

[7] Level 3 authentication is prevalent among financial institutions. *IDManagement.gov, Trust Framework Provider Adoption* Process (*TFPAP) For Levels of Assurance 1, 2, and non-PKI 3* 28–36, *http://www.idmanagement.gov/documents/TrustFrameworkProviderAdoptionProcess.pdf.* In 2005, the Federal Financial Institutions Examination Council (''FFIEC'') provided guidance, indicating that commercial banking/brokerage businesses have been using out of band authentication for years. Federal Financial Institutions Examination Council, *Authentication in an Internet Banking Environment* 11, *http://ithandbook.ffiec.gov/media/28059/frb-sr_05_19.pdf.* The FFIEC gave U.S. banks until the end-of-year 2006 to implement two factor authentication, which is part of the level 3 authentication system. Slashdot, *Banks to use two factor authentication by end of 2006. http://it.slashdot.org/story/05/10/19/2340245/Banks-to-Use-2-factor-Authentication-by-End-of-2006.*

[8] Among other government entities, the General Services Administration (''GSA''), the Internal Revenue Service (''IRS''), the Drug Enforcement Administration, and the United States Patent and Trademark Office have implemented level 3 for authentication purposes. The submission page for the GSA states that all submitted digital authentication certificate(s) must be level 3. General Services Administration eOffer/eMod, *http://eoffer.gsa.gov/eoffer_docs/aces_information.htm.*

The IRS requires level 3 or level 4 authentication. IRS Remote Access for Data Centers, *http://www.irs.gov/privacy/article/0,,id=208067,00.html.* Internal Revenue Service, *Modernized e-File (MeF) Guide for Software Developers and Transmitters* 171, *http://www.irs.gov/pub/irs-pdf/p4164.pdf.*

The Drug Enforcement Administration asserted that ''the use of . . . Assurance Level 3 identity proofing and two-factor authentication . . . will provide security commensurate with the current paper-based prescription system, and will meet statutory obligations of the CSA.'' Drug Enforcement Administration, *E-Authentication Risk Assessment for Electronic Prescriptions for Controlled Substances* 32, *http://www.deadiversion.usdoj.gov/ecomm/e_rx/risk_assessment_dea_218.pdf.*

In 2008, the United States Patent and Trademark Office clarified that Level 3 authentication was needed for submission of documents other than an initial application. United States Patent and Trademark Office, *Legal Framework For EFS-Web* 4, *http://www.uspto.gov/patents/process/file/efs/guidance/legalframework_2008.pdf.*

[9] Title 18 U.S.C. 1001 states as follows:

(a) Except as otherwise provided in this Section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in Section *2331*), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or Section *1591,* then the term of imprisonment imposed under this Section shall be not more than 8 years.

[10] A key fob is a small hardware device with built-in authentication mechanisms. The key fob controls access to network services and information. The user identifies his or her cell phone and/or email address to be used with the fob and the system to which he or she is accessing stores the information along with the user ID and other details.

[11] A digital certificate is an electronic document that uses a digital signature to bind a public key with an individual using such information as the name of a person or an organization. The certificate, obtained from Microsoft, VeriSign, or other firm, can be used to verify that a public key belongs to an individual.

[12] USB Tokens are designed to securely store an individual's digital identity. These portable tokens plug into a computer's USB port either directly or using a USB extension cable. When users attempt to login to applications via the desktop, VPN/WLAN or Web portal, they will be prompted to enter their unique PIN number. If the entered PIN number matches the PIN within the USB Token, the

cards,[13] biometrics,[14] out of band options, and virtual tokens. After considering cost factors, ease of use, infrastructure constraints, and the level of security provided, the Office expects to pursue either an out of band option or a virtual token option for digital authentication purposes. The Office's proposal is guided by the knowledge that banks, insurance companies, and federal agencies (*i.e.,* the Internal Revenue Service) have implemented these two methods and have found them to be effective.

Virtual tokens. A virtual token is a hash [15] of unique system characteristics paired with the standard username and password. Virtual tokens work by sharing the token generation process between a Web site and the individual's computer. They have the advantage of not requiring the distribution of additional hardware or software. In addition, since the user's computer communicates directly with the authenticating Web site, virtual tokens are resistant to ''man-in-the-middle attacks'' [16] and similar forms of online fraud. In most respects, virtual tokens function like the fob (physical) token noted above, but without the added costs. Some of the benefits of a virtual token authentication method are that the measure is simple to implement, its software is easy to configure, and neither the Office nor the user would require special equipment. However, a key drawback to using virtual tokens for identity authentication related to SOA forms is that with this method, authentication can only be implemented from previously identified computers connected at a specific site.

Out of Band (Email/SMS). Out of band authentication is a security confirmation system that provides an added layer of protection to validate certain transactions. It uses a separate, discrete pathway (''out of band'') to authenticate an individual's identity while performing online transactions. It can be performed either by text messaging or by email. When a user logs into a particular Web site, a numeric code is sent via Short Messaging Service (''SMS'') to either a cell phone or email address on record. Upon receiving the code, the user must to enter it on a secure Web page to verify his authenticity.

Some of the benefits of out of band authentication techniques are: (1) They are easy to implement; (2) the software is simple to configure; and (3) they do not require specialized equipment. Another key benefit of out of band authentication is that unlike virtual tokens, out of band options do not require a participant to use the same computer at the same location, and therefore are more practical for some operators who have several different individuals working on a particular SOA. Out of band security is tied to a specific user but is not tied to a specific computer at a particular physical site. Because of this flexibility, the Office believes that the out of band option may be a more workable approach to implementing electronic signatures for most operators.

The SOA signature authorization method adopted by the Office must also comply with the Federal Information Processing Standards (''FIPS''). FIPS are standards developed by the United States federal government for use in computer systems by all non-military government agencies and by government contractors.[17] The levels of the digital authentication discussed above, which are known as cryptographic modules, are outlined in FIPS 140.2. Based on the Office's understanding of virtual tokens and out of band methods, the Office tentatively concludes that these Level 3 authentication methods conform to FIPS.

B. Proposed Identity Authentication Procedure

Access to eLi will be predicated on security-based user roles that allow each cable operator to control who has the authority to prepare various elements of the SOA. Cable operators have advised the Office that under the filing system currently in place, often the person who signs/certifies the paper SOA is not the same person or persons charged with doing other preliminary tasks related to the preparation of the SOA and the issuance of the required royalty payment. Under either of the proposed Level 3 electronic identity authentication systems, each person needing access to the document during the preparation phase would be able to gain access to the body of the SOA document, while the system would only give electronic access to the certification page of the SOA to the person of authority who was pre-designated by the cable operator to be the signer. Regardless which authentication method is ultimately chosen, ''approval'' of an SOA will mean the simultaneous certification and signing of the document by the appropriate official.

The Office envisions that the digital authentication and signing process would work with either a virtual token or an out of band system. In closely evaluating the two systems, we concluded that the out of band option would be the more practical one, and propose adopting that option. Under either Level 3 option, the person(s) responsible for preparing an SOA on behalf of a cable system would be able to log onto eLi using a previously established user name and password, and the system would authenticate each one as a ''preparer.'' The same procedure would be followed by any reviewer of the ''draft'' SOA, such as a company officer or attorney.

After the preparers and reviewers have produced a completed version of the body of the SOA in eLi, the person charged with signing and certifying the document on behalf of the cable system would follow a different procedure to electronically approve and sign the document. The signer could be a person who prepared the document or could be someone else with statutory authority to sign it. Like others with access to the SOA, he or she would log onto eLi using a previously established user name and

appropriate digital credentials are passed to the network and access is granted. PIN numbers stored on the token are encrypted for added security.

[13] A smart card, chip card, or integrated circuit card is any pocket-sized card with embedded integrated circuits. Smart cards support multiple authentication factors (PIN, fingerprint template, digitally signed photo), and provide a way to digitally sign and encrypt security documents, other data, communications and transactions. Smart chip-based credentials allow individuals to use their identities safely, quickly and widely and trust that their personal information remains private.

[14] Biometrics are technologies used for measuring and analyzing a person's unique characteristics. There are two types of biometrics: behavioral and physical. Behavioral biometrics are generally used for verification while physical biometrics can be used for either identification or verification. Fingerprint biometrics are common for digital authentication purposes and are best for devices such as cell phones, USB flash drives, notebook computers and other applications where price, size, cost and low power are key requirements.

[15] A ''hash'' is a unique and permanent code or value generated from the contents of an electronic document at the time of submission.

[16] ''A ''man-in-the-middle attack,'' also known as a bucket brigade attack, fire brigade attack, or sometimes a Janus attack, is a form of active eavesdropping in which the attacker (an impersonator) makes independent connections with the victims and relays messages between them, making them believe that they are talking directly to each other over a private connection. In fact, though, the entire conversation is controlled by the attacker, who intercepts all messages between the two victims and injects new messages.

[17] Under the Information Technology Management Reform Act (Pub. L. 104–106), the Secretary of Commerce must approve standards and guidelines for Federal computer systems that are developed by the National Institute of Standards and Technology (''NIST''). *See* NIST Publication 800–63–1, *http://csrc.nist.gov/publications/nistpubs/800–63–1/SP–800–63–1.pdf.* These standards and guidelines are issued by NIST as Federal Information Processing Standards (FIPS) for government-wide use. NIST develops FIPS when there are compelling Federal government requirements, such as for security and interoperability, and there are no acceptable industry standards or solutions.

password, and the system would ''identify'' him or her as the signer authorized to complete the certification process. ELi would then send the signer a code that provides access for a virtual token or out of band authentication of the signer's identity.[18] Once the signer has successfully completed the authentication process, he or she would then follow a procedure to obtain, electronically approve, and electronically sign the final version of the SOA.

The Copyright Office anticipates that the system will display a ''notice of consent to electronic records,'' and the signer would have to ''accept'' the terms of the notice of consent. Once accepted, the system would display the SOA for approval. The signer would have the opportunity to review the SOA, enter an ''S-signature'' [19] and his title, and then complete the transaction by entering a ''key'' to indicate that the SOA is being electronically signed.

ELi is being designed to save the details about the electronic signature process for each SOA filed. It will use the electronic ''key'' to generate hash from the contents of the electronically filed SOA. The hash of the SOA will help ensure that the approved SOA is not changed after approval. The electronically-signed document will identify the signer of the document, the date the document was signed, and the information provided at the time of submission.

C. Proposed Regulations

To effectuate the process for electronic identity authentication as a part of eLi, the Office proposes new regulations governing the electronic signing and certification process. Currently, Section 201.17(e)(14) provides that each Statement of Account filed under Section 111 shall contain the handwritten signature of the owner of the cable system or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or a partner, if the owner is a partnership; or an officer of the corporation, if the owner is a corporation. The signature must be accompanied by (1) the printed or typewritten name of the person signing the SOA; (2) the date of signature; (3) if the owner of the cable system is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the SOA; (4) certification of the capacity of the person signing; and (5) a declaration of the veracity of the statements of fact contained in the SOA and the good faith of the person signing in making such statement of fact.

Under eLi, an electronic signature will be substituted for the handwritten signature, and the other requirements will remain in place for filing a SOA. ELi will include a two step authentication procedure to identify the person completing the certification process. As explained above, the person with authority to certify the accuracy of the information in and sign the SOA will access the certification Section of the SOA using the two step authentication process, approve the form, provide his or her title or official position in the organization, and sign the form using an electronic ''S-signature.'' This process will also apply to the filing of SOA amendments.

1. Purpose and Scope

The proposed Section will be placed at the end of Section 201.17(e) as a new Section (e)(15), because the electronic signatures on an electronically filed SOA will be considered part of the contents of the SOA. Proposed Section 201.17(e)(15) sets forth the purpose and scope of the new authentication and signature protocol. The regulation addresses the criteria under which the Office will consider electronic records and electronic signatures to be trustworthy, reliable, and generally equivalent to handwritten signatures executed on paper. The regulation applies to SOA records and related documents [20] in electronic form that are created, modified, maintained, archived, retrieved, or transmitted, under any records requirements set forth in Section 201.17. Where electronic signatures meet the other requirements of Sections 201.17(d) and (e), the Office will consider the electronic signatures to be equivalent to full handwritten signatures, initials, and other general signings required by Copyright Office regulations. Electronic records that meet the requirements of this regulation may be used in lieu of paper records unless paper records are specifically required.

2. Definitions

Proposed Section 201.17(e)(15)(i) would codify terms and definitions pertinent to electronic document authentication and electronic signatures on SOAs. The Office has created six new definitions:

(A) ''Authentication'' is a cryptographic or other secure electronic technique that allows the Copyright Office to authenticate the identity of an individual who signs and certifies a Statement of Account or related documents and to determine that the Statement or related documents were not altered, changed, or modified during their transmission to the Copyright Office.

An ''electronic signature'' is a signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified.

A ''handwritten signature'' is the scripted name or legal mark of an individual handwritten by that individual on a document or other writing and executed or adopted with the present intention to authenticate the signed document or other writing.

A ''password,'' is confidential authentication information composed of a string of characters.

The term ''token'' refers to an item necessary for user identification when used for the authentication of a signature.

3. Signature Parameters

Proposed Section 201.17(e)(15)(iv) sets forth the functional requirements for tying the signer with the electronically filed SOAs. The Office proposes that electronically signed electronic records shall contain information that clearly indicates the following: (1) The printed name of the signer; (2) the date and time the signature was executed; and (3) the title of the signee.

The proposed regulation also specifies that each electronic signature is unique to one individual and shall not be reused by, or reassigned to, anyone else within the cable system.

4. Authentication Protocols

Proposed Section 201.17(e)(15)(v) establishes authentication components and controls for a Level 3 authentication protocol. Level 3 authentication requires at least a two factor authentication process and is based on proof of possession of a cryptographic key. Typically, a key may be used only during a limited time period, *i.e.,* up to 30 minutes. Each SOA must contain the signature of the appropriate certifying official. In some instances, one person will be responsible for signing multiple cable SOAs. The proposed system will allow a signing official to use a single electronic signature that automatically applies multiple signature time stamps

[18] If we adopt an out of band authentication method, the authentication code would be sent via email correspondence to the signer's pre-identified mailbox.

[19] An S-signature is a signature, made by electronic or mechanical means, that is inserted between forward slash marks.

[20] ''Related documents'' would include attachments related to the SOA submission and documents submitted in response to a request from the Licensing Division.

to a batch of SOAs submitted by the multiple system operator (''MSO'') during a single session, as explained below. In this way, a series of SOA submissions and electronic signings are made with one ''signing'' executed and initiated by the individual during one continuous period of controlled system access while the key remains valid. If the key's validity expires before all of the multiple SOAs are electronically signed with time stamps, a new key may be requested to complete the certification and signing process. Section (e)(15)(iii) provides that if the signing individual executes one or more electronic signings that are not performed during a single, continuous period of controlled system access, the signer must reinitiate the authentication process to proceed with the signing.

5. Batch Submissions

Proposed Section 201.17(e)(15)(vi) addresses the submission of multiple SOAs by the same cable operator in one group or ''batch'' filing. The Office proposes that eLi be configured to enable a cable operator to choose to file multiple SOAs with a single ''submit'' key. The single electronic signature by the appropriate individual would be automatically applied to all SOAs in the batch with a separate recognizable electronic signature stamp and time stamp for each individual SOA comprising the batch. The proposed rule specifically states that batch or bulk filings of electronically filed Statements of Account would be permitted so long as the cable operator complies with paragraphs (3) and (4) of the regulation.

D. Other Rule Revisions

The shift from a paper filing system to an electronic filing system necessitates an examination of existing rules to see what needs to be changed to facilitate the transition. The Office has identified the following regulations as being in need of updating. There may be other rules that may be affected by the switch to electronic filing, but it is difficult to predict all conceivable changes at this time.

1. Accounting Periods and Deposits

Section 201.17(c)(2) establishes rules regarding accounting periods and the depositing of royalties under the cable statutory license. This rule needs to be updated to reflect the advent of electronic filing. The rule contains a reference SOAs being ''physically received,'' which implies that a hard copy version of SOAs must be submitted to the Office. An update is necessary to remove the term ''physically'' from the regulation, to reduce any confusion.

2. Forms

Section 201.17(d)(1) explains where the public may obtain a physical copy of the Statement of Account form. This reference has been in the Office's regulations since 1978, but is irrelevant in an e-filing environment. During the transition to all-electronic filing, the Office proposes to retain this portion of the regulation to accommodate any remitters who may need to use the current SOA forms rather than immediately file on the new online filing system. The SOA forms are currently available either at *www.copyright.gov* or by contacting the Licensing Division at: Library of Congress, U. S. Copyright Office, Licensing Division, 101 Independence Avenue SE., Washington, DC 20557–6400. The Office proposes amending the regulation to reflect this different procedure for obtaining hard copy SOA forms, and anticipates that such forms will ultimately be phased out.

3. Handwritten Signatures

Section 201.17(e)(14) sets forth the handwritten signature requirements for cable systems filing hard copy Statements of Account. The Office understands, as explained above, that even after the transition to an e-filing system, there will for some time remain certain instances in which cable operators will need to file physical versions of the SOA forms. For example, paper filings may still be necessary where cable operators must back-file SOAs for accounting periods that ended before eLi becomes operational (*i.e.,* covering an accounting period such as January 1–June 30, 2011). The Office anticipates that there will be very few instances in which this mode of filing will still be warranted. Nevertheless, the Office proposes to maintain the current handwritten signature requirements, but modify Section 201.17(e)(14) to include a reference to the new electronic signature requirements.

4. Copies of Statements of Account

Current Section 201.17(l) requires cable operators to file an original and one copy of a Statement of Account with the Licensing Division. The Office proposes to retain this requirement to address those limited instances where paper filings are still necessary. However, the Office plans to amend this rule to clarify that when a licensee files a SOA via eLi, only one electronic form need be filed with the Licensing Division because digital copies can easily be made if the situation so warrants. This will reduce unnecessary filings and work burdens.

5. Signatures and Certifications Related to Corrections, Supplemental Payments, and Requests for Refunds

Current Section 217.17(m) outlines the procedures to be followed by a cable operator who seeks to correct a SOA, submit a supplemental royalty fee payment for deposit, or request a refund of royalty fees already paid. Section 217.17(m)(3)(iii)(B) outlines the procedure to be followed where the operator's calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low. The regulation requires the cable operator to submit an affidavit or statement that indicates that the corrected information is signed and certified as made in good faith under penalty of perjury. The affidavit or statement must describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations. The Licensing Division has accepted under this provision amended SOAs that have been signed and certified by the appropriate party in Space O of the statement, because the certification language in Space O is the equivalent of a sworn affidavit or statement in accordance with Section 1746 of title 28 of the United States Code.

The Office posits that it would be appropriate to retain this provision for requests to correct the royalty calculations made in SOAs that were not filed and signed electronically, so long as such statements are still accepted by the Office. However, the Office proposes to amend the regulation to codify the Division's current practice of accepting the filing of a signed and certified amended SOA in lieu of the sworn affidavit or statement required by the regulation, so long as the amended statement (with any pertinent attachments), describes the reasons why the royalty fee was improperly calculated and includes a detailed analysis of the proper royalty calculations.

The Office has also determined that for SOAs that were originally filed and signed under the eLi system, the electronic signature verification process will satisfy the signature and certification requirements set out in the current Section 201.17(m)(3)(iii). As with paper submissions, the Office would require that electronic amended Statements of Account include, either on the amended statement itself or in an

attached document, an explanation of why the royalty fee was improperly calculated and a detailed analysis of the proper royalty calculations.

IV. Conclusion

The Office hereby seeks comment from the public on issues raised in this Notice related to the authentication of electronically filed Statements of Accounts, the establishment of proposed rules for electronic signatures, and the concomitant rule changes necessary to implement the new proposed regulations. If an interested party identifies any additional pertinent issues related to the authentication of electronic signatures on SOA forms that have been filed on eLi, the Office encourages the party to bring those matters to its attention.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

For the reasons set forth in the preamble, the Copyright Office proposes to amend part 201 of title 37 of the Code of Federal Regulations as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.17 by:
■ a. Revising the first sentence of paragraph (c)(2), the last sentence of (d)(1), paragraphs (e)(14) introductory text and (e)(14)(iii)(A) and (B);
■ b. Adding paragraph (e)(15); and
■ c. Revising paragraphs (l) and (m)(3)(iii)(B).

The revisions and addition read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(c) * * *

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were received in the Copyright Office. * * *

* * * * *

(d) * * *

(1) * * * Copies of Statement of Account forms are available online at *www.copyright.gov/forms* or upon request to the Library of Congress, Copyright Office, Attn: 111 Licenses, 101 Independence Avenue SE., Washington, DC 20559.

* * * * *

(e) * * *

(14) The handwritten or electronic signature of:

(iii) * * *

(A) The printed name of the person signing the Statement of Account;

(B) The date of signature, for handwritten signatures on statements that are not filed electronically, or, the electronically created date and time stamp for electronically filed and signed statements.

* * * * *

(15) For signatures on and certification of Statements of Account, each statement must include either a handwritten signature or an electronic signature of a person designated in paragraph (e)(14) of this section. Signing the Statement of Account signifies that the signer has examined the statement and certifies that all statements of fact contained therein are true, complete, and correct to the best of the signer's knowledge, information, and belief, and are made in good faith.

(i) For purposes of this section:

(A) *Authentication* is a cryptographic or other secure electronic technique that allows the Copyright Office to authenticate the identity of an individual who signs and certifies a Statement of Account or related documents and to determine that the statement or related documents were not altered, changed, or modified during their transmission to the Copyright Office.

(B) An *electronic signature* means a signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified. Each electronic signature shall be unique to one individual and shall not be reused by, or reassigned to, anyone else.

(C) A *handwritten signature* is the scripted name or legal mark of an individual handwritten by that individual on a document or other writing that is executed or adopted with the present intention to authenticate the signed document or other writing. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other devices that capture the name or mark.

(D) A *password* is confidential authentication information composed of a string of characters.

(E) A *token* is an item necessary for user identification when used for the authentication of a signature.

(ii) Each electronic signature shall require electronic authentication. Electronic authentication shall require use of both an identification code and a password to obtain a random generated key for access to the Statement of Account for the purpose of signing the statement.

(iii) When an individual executes one or more electronic signings not performed during a single, continuous period of controlled system access, each new electronic signing or signings shall require the signer to reinitiate the authentication process.

(iv) Electronically signed records shall include information that clearly indicates:

(A) The printed name of the signer;

(B) The date and time the signature was executed; and

(C) The title of the signer.

(v) Each Statement of Account must contain the signature of the appropriate certifying official. The verification of the electronic signature of that official must be accomplished by use of an authentication system determined by the Register of Copyrights. The electronic signature authentication process shall be based upon the signer/certifier's proof of possession of a cryptographic key that would provide that person with access to the certification page of the document being electronically signed.

(vi) A cable official of a multiple system operator may, during a single period of controlled system access, use a single electronic signature to sign/certify multiple Statements of Account so long as the official complies with paragraphs (3) and (4) of this Section. Once such official electronically signs the certification page of the first in a series of related statements, the electronic licensing system will in the same signing session automatically apply multiple electronic signatures and time stamps to some or all of the statements in the batch. If the cryptographic key expires before all of the multiple statements are electronically signed and time stamped, to complete the batch certification and signing process the official must request a new key and begin a new period of controlled system access.

* * * * *

(l) *Copies of Statements of Account.* If a licensee files a Statement of Account electronically, the licensee shall file one electronic copy of the Statement of Account with the Licensing Division of the Copyright Office.

* * * * *

(m) * * *

(3) * * *

(iii) * * *

(B) In the case of a request filed under paragraph (m)(1)(ii) of this Section, where the royalty fee was miscalculated

and the amount deposited in the Copyright Office was either too high or too low,

(*1*) If the original Statement of Account was not filed and signed electronically, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, a statement in accordance with Section 1746 of title 28 of the United States, made and signed in accordance with paragraph (e)(14) of this Section. In the alternative, the cable operator may choose to file an amended Statement of Account signed and certified in Space O of the amended statement. The affidavit, statement, or amended Statement of Account shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations. If the filing official chooses to file an amended Statement of Account, this additional information may be included on the Statement of Account itself or may be set out in a written document attached to the Statement of Account.

(*2*) If the original Statement of Account was filed and signed electronically, the filing official of the cable system shall electronically sign and file in accordance with paragraph (e)(15) of this Section an amended Statement of Account. The amended statement shall include on the amended statement itself, or in an attached written document, an explanation of why the royalty fee was improperly calculated and a detailed analysis of the proper royalty calculations.

* * * * *

Dated: June 18, 2013.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2013–15016 Filed 6–25–13; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2012–0338; FRL–9827–6]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Ohio Portion of the Wheeling Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Supplemental.

SUMMARY: EPA is issuing a supplement to its proposed approval of Ohio's request to redesignate the Ohio portion of the Wheeling, West Virginia-Ohio, area to attainment for the 1997 annual National Ambient Air Quality Standards (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). This supplemental proposal revises and expands the basis for proposing approval of the state's request, in light of developments since EPA issued its initial proposal on November 30, 2012. This supplemental proposal addresses the effects of a January 4, 2013, decision of the United States Court of Appeals for the District of Columbia (DC Circuit or Court) to remand to EPA two final rules implementing the 1997 $PM_{2.5}$ standard. In this supplemental proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by Ohio. EPA is proposing that the inventories for ammonia and volatile organic compounds (VOC), in conjunction with the inventories for nitrogen oxides (NO_X), direct $PM_{2.5,}$ and sulfur dioxide (SO_2) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirements of the Clean Air Act (CAA or Act). EPA is seeking comment only on the issues raised in its supplemental proposal, and is not re-opening for comment other issues raised in its prior proposal.

DATES: Comments must be received on or before July 26, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0338, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-Mail: Blakley.Pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0338. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of this document, ''What Should I Consider as I Prepare My Comments for EPA?''

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J),

Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background for the supplemental proposal?
III. On what specific issues is EPA taking comments?
A. Effect of the January 4, 2013, DC Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4
1. Background
2. Supplemental Proposal on This Issue
a. Applicable Requirements for Purposes of Evaluating the Redesignation Request
b. Subpart 4 Requirements and Ohio's Redesignation Request
c. Subpart 4 and Control of $PM_{2.5}$ Precursors
d. Maintenance Plan and Evaluation of Precursors
B. Ammonia and VOC Comprehensive Emissions Inventories
IV. Summary of Proposed Actions
V. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for the supplemental proposal?

On April 16, 2012, the Ohio Environmental Protection Agency (OEPA) submitted a request to EPA to redesignate the Ohio portion of the Wheeling, West Virginia-Ohio nonattainment area (Belmont County, Ohio) to attainment for the 1997 annual $PM_{2.5}$ NAAQS, and for EPA approval of Ohio's state implementation plan (SIP) revision containing an emissions inventory and a maintenance plan for the area.

On December 2, 2011, EPA published a notice of final rulemaking determining that the air quality in the Wheeling area has met the 1997 annual $PM_{2.5}$ standard (76 FR 75464). On November 30, 2012, EPA published a proposed rulemaking determining further that the Ohio portion of the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA (77 FR 71371). In that rulemaking EPA proposed several related actions. First, EPA proposed to approve the request from OEPA to change the legal designation of the Ohio portion of the Wheeling area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA also proposed to approve Ohio's $PM_{2.5}$ maintenance plan for the Ohio portion of the Wheeling area as a revision to the Ohio SIP because the plan meets the requirements of section 175A of the CAA. In addition, EPA proposed to approve 2006 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Ohio's April 16, 2012, $PM_{2.5}$ redesignation request submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA proposed a finding of insignificance of motor vehicle emissions for the Ohio portion of the Wheeling area (such that no motor vehicle emission budgets for emissions of directly emitted $PM_{2.5}$ and NO_X are necessary). EPA did not receive adverse comments on the proposed rulemaking.

Today, EPA is issuing a supplement to its November 30, 2012, proposed rulemaking. This supplemental proposal addresses two separate issues which affect the proposed redesignation and which have arisen since the issuance of the proposal: A recent decision of the D.C. Circuit, and Ohio's supplemental submission of comprehensive ammonia and VOC emissions inventories.

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013). In a supplemental submission to EPA on April 30, 2013, Ohio submitted 2007/2008 ammonia and VOC emissions inventories to supplement the emissions inventories that had previously been submitted.

III. On what specific issues is EPA taking comments?

A. Effect of the January 4, 2013, D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4

1. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I.

2. Supplemental Proposal on This Issue

In this portion of EPA's supplemental proposal, EPA is soliciting comment on the limited issue of the effect of the Court's January 4, 2013, ruling on the proposed redesignation of the Ohio portion of the Wheeling area to attainment for the 1997 annual $PM_{2.5}$ standard. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Ohio portion of the Wheeling area to attainment, because even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. First, EPA explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA shows that, even if EPA applies the subpart 4 requirements to the Ohio portion of the Wheeling area redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes

into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Ohio's redesignation request for the Ohio portion of the Wheeling area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Ohio portion of the Wheeling area redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[1] In this case, at the time that Ohio submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Ohio portion of the Wheeling area's redesignation, the subpart 4 requirements were not due at the time Ohio submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements'', for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D''. Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of the Ohio portion of the Wheeling area's redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. While Ohio submitted its redesignation request on April 16, 2012, and EPA proposed to approve it on November 30, 2012, the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ implementation rule concerning the applicability of the provisions of subpart 4 until January 4, 2013.

To require Ohio's fully-completed and long-pending redesignation request to comply now with requirements of subpart 4 would be to give retroactive

[1] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

effect to such requirements when the state had no notice that it was required to meet them. The DC Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[2] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize Ohio by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

b. Subpart 4 Requirements and Ohio's Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Ohio portion of the Wheeling area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Ohio portion of the Wheeling area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Ohio portion of the Wheeling area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10}[3] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). EPA's previously published proposal for this redesignation action addressed how the Wheeling area meets the requirements for redesignation under subpart 1. These subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Ohio portion of the Wheeling area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area.[4] Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[5] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[6] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

[2] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

[3] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[4] Section 188(a) also provides that EPA publish a notice announcing the classification of each area under subpart 4.

[5] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[6] *I.e.,* attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013, decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively [7] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 $PM_{2.5}$ standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

In its November 30, 2012, proposal for this action, EPA proposed to determine that the Ohio portion of the Wheeling area has attained the 1997 $PM_{2.5}$ standard and therefore meets the attainment–related plan requirements of subpart 1. Under its longstanding interpretation, EPA is proposing to determine here that the area also meets the attainment-related plan requirements of subpart 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c) and section 189(a)(1)(c), and a RFP demonstration under 189(c)(1) are satisfied for purposes of evaluating the redesignation request.

c. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit, in *NRDC v. EPA,* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. The Court's opinion raises the issue of the appropriate approach to addressing $PM_{2.5}$ precursors in this and future EPA actions. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

Id. at 21, n.7.

For a number of reasons, EPA believes that the Court's decision on this aspect of subpart 4 does not preclude EPA's approval of Ohio's redesignation request for the 1997 $PM_{2.5}$ NAAQS. First, while the Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,' '' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Ohio portion of the Wheeling area, EPA believes that doing so would

[7] As EPA has explained above, we do not believe that the Court's January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

not affect the approvability of the proposed redesignation of the area for the 1997 $PM_{2.5}$ standard. The entire Wheeling area has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[8] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Ohio portion of the Wheeling area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA in this supplemental proposal proposes to determine that the Ohio SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed supplemental determination is based on our findings that: (1) The Ohio portion of the Wheeling area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[9] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Ohio portion of the Wheeling area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the area. *See* 57 FR 13539–13542.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation, nor does EPA believe that requiring Ohio to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.,* states may determine that only certain precursors need be regulated for attainment and control purposes.[10] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[11] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Wheeling area has already attained the 1997 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Ohio's request for redesignation of the Ohio portion of the Wheeling area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Ohio portion of the Wheeling area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

In sum, even if Ohio were required to address precursors for the Ohio portion of the Wheeling area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded $PM_{2.5}$ implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

d. Maintenance Plan and Evaluation of Precursors

With regard to the redesignation of the Ohio portion of the Wheeling area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this supplemental proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 $PM_{2.5}$ standard and that the state has shown that attainment of that standard is due to permanent and enforceable emission reductions.

In its prior proposal notice for this action, EPA proposed to determine that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 $PM_{2.5}$ standard in the Ohio portion of the Wheeling area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance

[8] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[9] The Ohio portion of the Wheeling area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

[10] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM–10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[11] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Ohio portion of the Wheeling area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been well controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Ohio portion of the Wheeling area are very low, estimated to be less than 500 tons per year. *See* Table 4 below. This amount of ammonia emissions is especially small in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions from sources in the area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

Ohio's maintenance plan shows that emissions of direct $PM_{2.5}$, SO_2, and NO_X are projected to decrease by 212.68 tons per year (tpy), 31,342.08 tpy, and 2,137.21 tpy, respectively, over the maintenance period. *See* Tables 1–3 below. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC emissions are projected to decrease by 1,155.91 tpy, and that ammonia emissions will decrease by 17.98 tpy, between 2007 and 2020. *See* Table 4 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that the downward trend of VOC and ammonia emissions would not continue through 2022. Given that the Wheeling area is already attaining the 1997 $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions from VOC and ammonia inventories would be consistent with continued attainment of the NAAQS. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 1997 $PM_{2.5}$ NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2022, the overall emissions reductions projected in direct $PM_{2.5}$, SO_2, and NO_X would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 $PM_{2.5}$ standard during the maintenance period.

TABLE 1—COMPARISON OF 2005, 2008, 2015, AND 2022 DIRECT $PM_{2.5}$ EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA

[Belmont County, Ohio]

Sector	Direct $PM_{2.5}$				
	2005	2008	2015	2022	Net change 2005–2022
Point	3.39	3.39	3.94	4.40	1.01
EGU [12]	93.85	69.58	20.87	0	−93.85
Area	307.93	305.38	297.20	289.22	−18.71
Non-road	33.60	29.80	20.84	11.89	−21.71
On-road [13]	105.74	88.66	45.08	26.32	−79.42
Total	544.51	496.81	387.93	331.83	−212.68

TABLE 2—COMPARISON OF 2005, 2008, 2015, AND 2022 SO_2 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA

[Belmont County, Ohio]

Sector	SO_2				
	2005	2008	2015	2022	Net change 2005–2022
Point	0.13	0.07	0.10	0.11	−0.02
EGU	37,329.95	15,126.00	8,783.33	6,065.04	−31,264.91
Area	93.50	92.24	87.16	82.29	−11.21
Non-road	44.82	24.46	8.23	3.51	−41.31
On-road	30.84	9.38	6.72	6.21	−24.63
Total	37,499.24	15,252.15	8,885.54	6,157.16	−31,342.08

[12] Electric generating units.

[13] Emissions projections for the on-road sector were generated using the MOVES model.

TABLE 3—COMPARISON OF 2005, 2008, 2015, AND 2022 NO_X EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA

[Belmont County, Ohio]

Sector	NO_X				
	2005	2008	2015	2022	Net change 2005–2022
Point	22.76	20.67	20.19	18.90	−3.86
EGU	4,149.93	4,167.94	4,477.58	4,738.00	588.07
Area	284.66	286.90	286.77	287.15	2.49
Non-road	484.31	444.10	306.14	172.31	−312
On-road	3,179.52	2,593.58	1,279.25	587.61	−2,591.91
Total	8,121.18	7,513.19	6,369.93	5,803.97	−2,137.21

TABLE 4—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA

[Belmont County, Ohio] [14]

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point	52.50	51.37	−1.13	56.94	56.09	−0.85
Area	777.12	774.54	−2.58	386.69	391.03	4.34
Non-road	418.70	218.65	−200.05	0.38	0.42	0.04
On-road	1,465.35	513.19	−952.16	48.10	26.58	−21.52
Fires	42.42	42.42	0	2.95	2.95	0
Total	2,756.08	1,600.17	−1,155.91	495.05	477.07	−17.98

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the area is 13 micrograms per cubic meter (μg/m³) (based on 2009–11 air quality data), which is well below the 1997 annual $PM_{2.5}$ NAAQS of 15 μg/m³. Moreover, the modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design value for this area is expected to significantly decline through 2020. In the RIA analysis, the 2020 modeled design value for the Wheeling area is 8.4 μg/m³. Given that all precursor emissions are projected to decrease through 2022, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2022.

Thus, EPA believes that there is ample justification to conclude that the Ohio portion of the Wheeling area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the D.C. Circuit's January 4, 2013, decision, and for the reasons set forth in this supplemental notice, EPA continues to propose approval of Ohio's maintenance plan and its request to redesignate the Ohio portion of the Wheeling area to attainment for the 1997 $PM_{2.5}$ annual standard.

B. Ammonia and VOC Comprehensive Emissions Inventories

In this supplemental proposal EPA also addresses the State of Ohio's supplemental submission that provides additional information concerning ammonia and VOC emissions in the Wheeling area in order to meet the emissions inventory requirement of CAA section 172(c)(3). Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current emissions inventory for a nonattainment area. For purposes of the $PM_{2.5}$ NAAQS, this emissions inventory should address not only direct emissions of $PM_{2.5}$, but also emissions of all precursors with the potential to participate in $PM_{2.5}$ formation, *i.e.,* SO_2, NO_X, VOC and ammonia.

In the November 30, 2012, proposed rule, EPA proposed to approve the emissions inventory information for direct $PM_{2.5}$, NO_X, and SO_2 submitted by OEPA as meeting the emissions inventory requirement for the Wheeling area. On April 30, 2013, OEPA supplemented its submittal with 2007/2008 emissions inventories for ammonia and VOC. The additional emissions inventory information provided by the state addresses emissions of VOC and ammonia from the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The state-submitted emissions inventories were based upon information generated by the Lake Michigan Air Directors Consortium (LADCO) in conjunction with its member states and are presented in Table 5 below.

LADCO ran the EMS model using data provided by Ohio to generate point source emissions estimates. The point source data was obtained from Ohio's source facility emissions reporting.

For area sources, LADCO ran the EMS model using the 2008 National Emissions Inventory (NEI) data provided by Ohio. LADCO followed Eastern Regional Technical Advisory Committee (ERTAC) recommendations on area sources when preparing the data. Agricultural ammonia emissions were not taken from NEI; instead emissions were based on Carnegie Mellon University's Ammonia Emission Inventory for the Continental United States (CMU). Specifically, the CMU 2002 annual emissions were grown to reflect 2007 conditions. A process-based ammonia emissions model developed

[14] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS.

for LADCO was then used to develop temporal factors to reflect the impact of average meteorology on livestock emissions.

Non-road mobile source emissions were generated using the NMIM2008 emissions model. LADCO also accounted for three other non-road categories not covered by the NMIM model (commercial marine vessels, aircraft, and railroads). Marine emissions were based on reports prepared by Environ entitled ''LADCO Nonroad Emissions Inventory Project for Locomotive, Commercial Marine, and Recreational Marine Emission Sources, Final Report, December 2004'' and ''LADCO 2005 Commercial Marine Emissions, Draft, March 2, 2007.'' Aircraft emissions were provided by Ohio and calculated using AP–42 emission factors and landing and take-off data provided by the Federal Aviation Administration. Rail emissions were based on the 2008 inventory developed by ERTAC.

On-road mobile source emissions were generated using EPA's MOVES2010a emissions model.

EPA notes that the emissions inventory developed by LADCO is documented in ''Regional Air Quality Analyses for Ozone, $PM_{2.5}$, and Regional Haze: Base C Emissions Inventory'' (September 12, 2011).

TABLE 5—WHEELING AREA AMMONIA AND VOC EMISSIONS (tpy) FOR 2007/2008 BY SOURCE SECTOR

Sector	Ammonia	VOC
Point	54.06	48.68
Area	405.94	863.87
Non-road	0.37	430.01
On-road	52.82	1,376.69
Total	513.19	2,719.26

EPA has concluded that the 2007/2008 ammonia and VOC emissions inventories provided by Ohio are complete and as accurate as possible given the input data available for the relevant source categories. EPA also believes that these inventories provide information about VOC and ammonia as $PM_{2.5}$ precursors in the context of evaluating redesignation of the Ohio portion of the Wheeling area under subpart 4. Therefore, we are proposing to approve the ammonia and VOC emissions inventories submitted by Ohio, in conjunction with the NO_X, direct $PM_{2.5}$, and SO_2 emissions inventories that EPA previously proposed to approve, as fully meeting the comprehensive inventory requirement of section 172(c)(3) of the CAA for the Ohio portion of the Wheeling area for the 1997 annual $PM_{2.5}$ standard. Since EPA's prior proposal addressed other precursor emissions inventories, EPA in this supplemental proposal is seeking comment only with respect to the additional inventories for VOC and ammonia that Ohio has submitted.

IV. Summary of Proposed Actions

After fully considering the D.C. Circuit's decision in the *NRDC* v. *EPA* on EPA's 1997 $PM_{2.5}$ Implementation rule, EPA in this supplemental notice is proposing to proceed with approval of the request to redesignate the Ohio portion of the Wheeling area to attainment for the 1997 annual $PM_{2.5}$ NAAQS and of the associated maintenance plan. EPA is concluding that the D.C. Circuit decision regarding the applicability of the requirements of subpart 4 of part D of title I of the CAA does not change the applicable requirements for redesignation of the Parkersburg area to attainment of the 1997 $PM_{2.5}$ NAAQS. In this supplemental notice, EPA is also proposing to approve the 2007/2008 ammonia and VOC emissions inventories as meeting, in conjunction with the NO_X, direct $PM_{2.5}$ and SO_2 inventories that EPA previously proposed to approve, the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. EPA is seeking comment only on the issues raised in its supplemental proposals, and is not re-opening comment on other issues addressed in its prior proposal.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these proposed actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 13, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–15295 Filed 6–25–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2012–0212; FRL–9827–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Ohio Portion of the Parkersburg-Marietta Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; supplemental.

SUMMARY: EPA is issuing a supplement to its proposed approval of Ohio's request to redesignate the Ohio portion of the Parkersburg-Marietta, West Virginia-Ohio, area to attainment for the 1997 annual National Ambient Air Quality Standards (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). This supplemental proposal revises and expands the basis for proposing approval of the state's request, in light of developments since EPA issued its initial proposal on November 30, 2012. This supplemental proposal addresses the effects of a January 4, 2013, decision of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court) to remand to EPA two final rules implementing the 1997 $PM_{2.5}$ standard. In this supplemental proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by Ohio. EPA is proposing that the inventories for ammonia and volatile organic compounds (VOC), in conjunction with the inventories for nitrogen oxides (NO_X), direct $PM_{2.5}$, and sulfur dioxide (SO_2) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirements of the Clean Air Act (CAA or Act). EPA is seeking comment only on the issues raised in its supplemental proposal, and is not re-opening for comment other issues raised in its prior proposal.

DATES: Comments must be received on or before July 26, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0212, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: Blakley.Pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0212. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of this document, ''What Should I Consider as I Prepare my Comments for EPA?''

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background for the supplemental proposal?
III. On what specific issues is EPA taking comments?
A. Effect of the January 4, 2013, D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4
1. Background

2. Supplemental Proposal on This Issue
a. Applicable Requirements for Purposes of Evaluating the Redesignation Request
b. Subpart 4 Requirements and Ohio's Redesignation Request
c. Subpart 4 and Control of $PM_{2.5}$ Precursors
d. Maintenance Plan and Evaluation of Precursors
B. Ammonia and VOC Comprehensive Emissions Inventories
IV. Summary of Proposed Actions
V. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for the supplemental proposal?

On February 29, 2012, the Ohio Environmental Protection Agency (OEPA) submitted a request to EPA to redesignate the Ohio portion of the Parkersburg-Marietta, West Virginia-Ohio nonattainment area (Washington County, Ohio) to attainment for the 1997 annual $PM_{2.5}$ NAAQS, and for EPA approval of Ohio's state implementation plan (SIP) revision containing an emissions inventory and a maintenance plan for the area.

On December 2, 2011, EPA published a notice of final rulemaking determining that air quality in the Parkersburg-Marietta area has met the 1997 annual $PM_{2.5}$ standard (76 FR 75464). On November 30, 2012, EPA published a proposed rulemaking determining further that the Ohio portion of the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA (77 FR 71383). In that rulemaking EPA proposed several related actions. First, EPA proposed to approve the request from OEPA to change the legal designation of the Ohio portion of the Parkersburg-Marietta area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA also proposed to approve Ohio's $PM_{2.5}$ maintenance plan for the Ohio portion of the Parkersburg-Marietta area as a revision to the Ohio SIP because the plan meets the requirements of section 175A of the CAA. In addition, EPA proposed to approve 2006 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Ohio's February 29, 2012, $PM_{2.5}$ redesignation request submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA proposed a finding of insignificance of motor vehicle emissions for the Ohio portion of the Parkersburg-Marietta area (such that no motor vehicle emission budgets for emissions of directly emitted $PM_{2.5}$ and NO_X are necessary). EPA did not receive adverse comments on the proposed rulemaking.

Today, EPA is issuing a supplement to its November 30, 2012, proposed rulemaking. This supplemental proposal addresses two separate issues which affect the proposed redesignation and which have arisen since the issuance of the proposal: a recent decision of the D.C. Circuit, and the State of Ohio's supplemental submission of comprehensive ammonia and VOC emissions inventories.

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013). In a supplemental submission to EPA on April 30, 2013, Ohio submitted 2007/2008 ammonia and VOC emissions inventories to supplement the emissions inventories that had previously been submitted.

III. On what specific issues is EPA taking comments?

A. Effect of the January 4, 2013, D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4

1. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I.

2. Supplemental Proposal on This Issue

In this portion of EPA's supplemental proposal, EPA is soliciting comment on the limited issue of the effect of the Court's January 4, 2013, ruling on the proposed redesignation of the Ohio portion of the Parkersburg-Marietta area to attainment for the 1997 annual $PM_{2.5}$ standard. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Ohio portion of the Parkersburg-Marietta area to attainment, because even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. First, EPA explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA shows that, even if EPA applies the subpart 4 requirements to the Ohio portion of the Parkersburg-Marietta area redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could

address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Ohio's redesignation request for the Ohio portion of the Parkersburg-Marietta area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Ohio portion of the Parkersburg-Marietta area redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[1] In this case, at the time that Ohio submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Ohio portion of the Parkersburg-Marietta area's redesignation, the subpart 4 requirements were not due at the time Ohio submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements'', for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D''. Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of the Ohio portion of the Parkersburg-Marietta area's redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. While Ohio submitted its redesignation request on February 29, 2012, and EPA proposed to approve it on November 30, 2012, the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ implementation rule concerning the applicability of the provisions of subpart 4 until January 4, 2013.

To require Ohio's fully-completed and long-pending redesignation request to comply now with requirements of subpart 4 would be to give retroactive effect to such requirements when the state had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[2]

[1] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

[2] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d

where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize Ohio by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

b. Subpart 4 Requirements and Ohio's Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Ohio portion of the Parkersburg-Marietta area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Ohio portion of the Parkersburg-Marietta area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Ohio portion of the Parkersburg-Marietta area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10} [3] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). EPA's previously published proposal for this redesignation action addressed how the Parkersburg-Marietta area meets the requirements for redesignation under subpart 1. These subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Ohio portion of the Parkersburg-Marietta area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area.[4] Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[5] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[6] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for

145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

[3] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[4] Section 188(a) also provides that EPA publish a notice announcing the classification of each area under subpart 4.

[5] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[6] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013, decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively [7] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 $PM_{2.5}$ standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

In its November 30, 2012, proposal for this action, EPA proposed to determine that the Ohio portion of the Parkersburg-Marietta area has attained the 1997 $PM_{2.5}$ standard and therefore meets the attainment-related plan requirements of subpart 1. Under its longstanding interpretation, EPA is proposing to determine here that the area also meets the attainment-related plan requirements of subpart 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c) and section 189(a)(1)(c), and a RFP demonstration under 189(c)(1) are satisfied for purposes of evaluating the redesignation request.

c. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit, in *NRDC* v. *EPA,* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. The Court's opinion raises the issue of the appropriate approach to addressing $PM_{2.5}$ precursors in this and future EPA actions. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the DC Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

Id. at 21, n.7.

For a number of reasons, EPA believes that the Court's decision on this aspect of subpart 4 does not preclude EPA's approval of Ohio's redesignation request for the 1997 $PM_{2.5}$ NAAQS. First, while the Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,''' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Ohio portion of the Parkersburg-Marietta area, EPA believes that doing so would not affect the approvability of the proposed redesignation of the area for the 1997 $PM_{2.5}$ standard. The entire Parkersburg-Marietta area has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major

[7] As EPA has explained above, we do not believe that the Court's January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

stationary sources of PM_{10} precursors.[8] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Ohio portion of the Parkersburg-Marietta area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA in this supplemental proposal proposes to determine that the Ohio SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed supplemental determination is based on our findings that (1) the Ohio portion of the Parkersburg-Marietta area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[9] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Ohio portion of the Parkersburg-Marietta area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the area. *See* 57 FR 13539–13542.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation, nor does EPA believe that requiring Ohio to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[10] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[11] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Parkersburg-Marietta area has already attained the 1997 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Ohio's request for redesignation of the Ohio portion of the Parkersburg-Marietta area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Ohio portion of the Parkersburg-Marietta area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

In sum, even if Ohio were required to address precursors for the Ohio portion of the Parkersburg-Marietta area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded $PM_{2.5}$ implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

d. Maintenance Plan and Evaluation of Precursors

With regard to the redesignation of the Ohio portion of the Parkersburg-Marietta area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this supplemental proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 $PM_{2.5}$ standard and that the state has shown that attainment of that standard is due to permanent and enforceable emission reductions.

In its prior proposal notice for this action, EPA proposed to determine that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 $PM_{2.5}$ standard in the Ohio portion of the Parkersburg-Marietta area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Ohio portion of the Parkersburg-Marietta area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

[8] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[9] The Ohio portion of the Parkersburg-Marietta area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

[10] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM–10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[11] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been well controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Ohio portion of the Parkersburg-Marietta area are very low, estimated to be less than 1,300 tons per year. *See* Table 4 below. This amount of ammonia emissions is especially small in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions from sources in the area. Third, as described below, available information shows that VOC is expected to decrease over the maintenance period so as not to interfere with or undermine the state's maintenance demonstration.

Ohio's maintenance plan shows that emissions of direct $PM_{2.5}$, SO_2, and NO_X are projected to decrease by 22.34 tons per year (tpy), 101,435.07 tpy, and 15,948.43 tpy, respectively, over the maintenance period. *See* Tables 1–3 below. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC emissions are projected to decrease by 968.82 tpy, and that ammonia emissions will increase by 87.45 tpy, between 2007 and 2020. *See* Table 4 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that the downward trend of VOC emissions would not continue through 2022. While ammonia emissions are projected to increase, given that the Parkersburg-Marietta area is already attaining the 1997 $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions from VOC inventories would be consistent with continued attainment and even a small increase in ammonia emissions would not cause a violation of the NAAQS. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 1997 $PM_{2.5}$ NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC emissions were to increase unexpectedly, and ammonia emissions were to increase further between 2020 and 2022, the overall emissions reductions projected in direct $PM_{2.5}$, SO_2, and NO_X would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 $PM_{2.5}$ standard during the maintenance period.

TABLE 1—COMPARISON OF 2005, 2008, 2015, AND 2022 DIRECT $PM_{2.5}$ EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE PARKERSBURG-MARIETTA AREA

[Washington County, Ohio]

Sector	Direct $PM_{2.5}$				
	2005	2008	2015	2022	Net change 2005–2022
Point	472.37	471.72	470.21	468.70	−3.02
EGU [12]	384.81	392.62	407.19	418.67	26.05
Area	148.43	222.16	251.82	254.36	35.20
Non-road	47.29	41.33	27.71	14.06	−27.27
On-road [13]	90.45	75.52	41.68	25.22	−50.30
Total	1,143.35	1,203.35	1,198.61	1,181.01	−22.34

[12] Electric generating units.
[13] Emissions projections for the on-road sector were generated using the MOVES model.

TABLE 2—COMPARISON OF 2005, 2008, 2015, AND 2022 SO_2 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE PARKERSBURG-MARIETTA AREA

[Washington County, Ohio]

Sector	SO_2				
	2005	2008	2015	2022	Net change 2005–2022
Point	5,200.90	5,372.72	5,744.96	6,122.46	749.74
EGU	140,957.01	133,348.05	61,849.00	31,206.55	−102,141.50
Area	9.78	10.56	10.51	10.15	−0.41
Non-road	85.52	46.37	14.91	5.70	−40.67
On-road	26.97	8.54	6.46	6.31	−2.23
Total	146,280.18	138,786.24	67,625.84	37,351.17	−101,435.07

TABLE 3—COMPARISON OF 2005, 2008, 2015, AND 2022 NO_X EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE PARKERSBURG-MARIETTA AREA

[Washington County, Ohio]

Sector	NO_X				
	2005	2008	2015	2022	Net change 2005–2022
Point	1,748.86	1,941.94	2,019.31	2,052.47	110.53
EGU	16,137.09	17,168.69	7,505.59	3,364.26	−13,804.43

TABLE 3—COMPARISON OF 2005, 2008, 2015, AND 2022 NO_X EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE PARKERSBURG-MARIETTA AREA—Continued

[Washington County, Ohio]

Sector	NO_X				
	2005	2008	2015	2022	Net change 2005–2022
Area	168.44	178.66	183.96	191.01	12.35
Non-road	926.75	829.26	530.03	237.54	−591.72
On-road [14]	2,687.09	2,247.41	1,200.52	572.25	−1,675.16
Total	21,668.43	22,365.96	11,439.41	6,174.53	−15,948.43

TABLE 4—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE PARKERSBURG-MARIETTA AREA

[Washington County, Ohio] [14]

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point	666.93	653.86	−13.07	567.76	660.88	93.12
Area	1,215.96	1,249.52	33.56	652.00	668.70	16.72
Non-road	428.74	229.60	−199.14	0.63	0.68	0.05
On-road	1,207.30	417.13	−790.17	43.64	21.22	−22.42
Fires	83.68	83.68	0	5.82	5.82	0
Total	3,602.61	2,633.79	−968.82	1,269.85	1,357.30	87.45

[14] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the area is 12.3 micrograms per cubic meter (μg/m³) (based on 2009–11 air quality data), which is well below the 1997 annual $PM_{2.5}$ NAAQS of 15 μg/m³. Moreover, the modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design value for this area is expected to significantly decline through 2020. In the RIA analysis, the 2020 modeled design value for the Parkersburg-Marietta area is 9.2 μg/m³. Given that all precursor emissions except ammonia are projected to decrease through 2022, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2022.

Thus, EPA believes that there is ample justification to conclude that the Ohio portion of the Parkersburg-Marietta area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the D.C. Circuit's January 4, 2013, decision, and for the reasons set forth in this supplemental notice, EPA continues to propose approval of Ohio's maintenance plan and its request to redesignate the Ohio portion of the Parkersburg-Marietta area to attainment for the 1997 $PM_{2.5}$ annual standard.

B. Ammonia and VOC Comprehensive Emissions Inventories

In this supplemental proposal EPA also addresses the State of Ohio's supplemental submission that provides additional information concerning ammonia and VOC emissions in the Parkersburg-Marietta area in order to meet the emissions inventory requirement of CAA section 172(c)(3). Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current emissions inventory for a nonattainment area. For purposes of the $PM_{2.5}$ NAAQS, this emissions inventory should address not only direct emissions of $PM_{2.5}$, but also emissions of all precursors with the potential to participate in $PM_{2.5}$ formation, i.e., SO_2, NO_X, VOC and ammonia.

In the November 30, 2012, proposed rule, EPA proposed to approve the emissions inventory information for direct $PM_{2.5}$, NO_X, and SO_2 submitted by OEPA as meeting the emissions inventory requirement for the Parkersburg-Marietta area. On April 30, 2013, OEPA supplemented its submittal with 2007/2008 emissions inventories for ammonia and VOC. The additional emissions inventory information provided by the state addresses emissions of VOC and ammonia from the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The state-submitted emissions inventories were based upon information generated by the Lake Michigan Air Directors Consortium (LADCO) in conjunction with its member states and are presented in Table 5 below.

LADCO ran the EMS model using data provided by Ohio to generate point source emissions estimates. The point source data was obtained from Ohio's source facility emissions reporting.

For area sources, LADCO ran the EMS model using the 2008 National Emissions Inventory (NEI) data provided by Ohio. LADCO followed Eastern Regional Technical Advisory Committee (ERTAC) recommendations on area sources when preparing the data. Agricultural ammonia emissions were not taken from NEI; instead emissions were based on Carnegie Mellon University's Ammonia Emission Inventory for the Continental United States (CMU). Specifically, the CMU 2002 annual emissions were grown to reflect 2007 conditions. A process-based ammonia emissions model developed for LADCO was then used to develop temporal factors to reflect the impact of average meteorology on livestock emissions.

Non-road mobile source emissions were generated using the NMIM2008 emissions model. LADCO also accounted for three other non-road categories not covered by the NMIM model (commercial marine vessels, aircraft, and railroads). Marine emissions were based on reports prepared by Environ entitled ''LADCO Nonroad Emissions Inventory Project for Locomotive, Commercial Marine, and Recreational Marine Emission Sources, Final Report, December 2004'' and ''LADCO 2005 Commercial Marine Emissions, Draft, March 2, 2007.'' Aircraft emissions were provided by Ohio and calculated using AP–42 emission factors and landing and take-off data provided by the Federal Aviation Administration. Rail emissions were based on the 2008 inventory developed by ERTAC.

On-road mobile source emissions were generated using EPA's MOVES2010a emissions model.

EPA notes that the emissions inventory developed by LADCO is documented in ''Regional Air Quality Analyses for Ozone, $PM_{2.5}$, and Regional Haze: Base C Emissions Inventory'' (September 12, 2011).

TABLE 5—PARKERSBURG-MARIETTA AREA AMMONIA AND VOC EMISSIONS (TPY) FOR 2007/2008 BY SOURCE SECTOR

Sector	Ammonia	VOC
Point	527.75	623.19
Area	711.50	1,267.64
Non-road	0.63	452.83
On-road	36.43	945.66
Total	1,276.30	3,289.32

EPA has concluded that the 2007/2008 ammonia and VOC emissions inventories provided by Ohio are complete and as accurate as possible given the input data available for the relevant source categories. EPA also believes that these inventories provide information about VOC and ammonia as $PM_{2.5}$ precursors in the context of evaluating redesignation of the Ohio portion of the Parkersburg-Marietta area under subpart 4. Therefore, we are proposing to approve the ammonia and VOC emissions inventories submitted by Ohio, in conjunction with the NO_X, direct $PM_{2.5}$, and SO_2 emissions inventories that EPA previously proposed to approve, as fully meeting the comprehensive inventory requirement of section 172(c)(3) of the CAA for the Ohio portion of the Parkersburg-Marietta area for the 1997 annual $PM_{2.5}$ standard. Since EPA's prior proposal addressed other precursor emissions inventories, EPA in this supplemental proposal is seeking comment only with respect to the additional inventories for VOC and ammonia that Ohio has submitted.

IV. Summary of Proposed Actions

After fully considering the D.C. Circuit's decision in the *NRDC* v. *EPA* on EPA's 1997 $PM_{2.5}$ Implementation rule, EPA in this supplemental notice is providing supplemental rationale for its action, published November 12, 2012, which proposed to redesignate the Ohio portion of the Parkersburg-Marietta area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, to approve the associated maintenance plan, and to approve the state's emission inventory. EPA is concluding that the D.C. Circuit decision regarding the applicability of the requirements of subpart 4 of part D of title I of the CAA does not change the applicable requirements for redesignation of the Parkersburg area to attainment of the 1997 $PM_{2.5}$ NAAQS. In addition, in this supplemental notice, EPA is addressing an enhanced 2007/2008 inventory that now addresses ammonia and VOC emissions, in conjunction with the NO_X, direct $PM_{2.5}$ and SO_2 inventories that EPA previously proposed to approve, thus providing additional basis for EPA's prior proposal that Ohio has met the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA for this area. EPA is seeking comment only on the issues raised in its supplemental proposals, and is not re-opening comment on other issues addressed in its prior proposal.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these proposed actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 13, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–15301 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 13–1396]

Wireline Competition Bureau Adds Two New Discussion Topics to Connect America Cost Model Virtual Workshop

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau adds two new virtual workshop discussion topics, entitled ''Community Anchor Institutions'' and ''Business Locations'' to seek public input.

DATES: Comments are due on or before July 15, 2013.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90, by any of the following methods:

▪ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

▪ *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *Virtual Workshop:* In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Katie King, Wireline Competition Bureau at (202) 418–7491 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 10–90; DA 13–1396, released June 17, 2013, as well as information posted online in the Wireline Competition Bureau's Virtual Workshop. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* In addition, the Virtual Workshop may be accessed via the Internet at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

1. On Tuesday, October 9, 2012, the Wireline Competition Bureau (Bureau) announced the commencement of a virtual workshop to solicit input and facilitate discussion on topics related to the development and adoption of the forward-looking cost model for Connect America Phase II. To date, the Bureau has sought comment on 26 different topics in the virtual workshop.

2. The Bureau adds two new virtual workshop discussion topics, entitled ''Community Anchor Institutions'' and ''Business Locations.'' Responses should be submitted in the virtual workshop no later than July 15, 2013. Parties can participate in the virtual workshop by visiting the Connect America Fund Web page, *http://www.fcc.gov/encyclopedia/connecting-america,* and following the link to the virtual workshop.

3. Comments from the virtual workshop will be included in the official public record of this proceeding. The Bureau will not rely on anonymous comments posted during the workshop in reaching decisions regarding the model. Participants should be aware that identifying information from parties that post material in the virtual workshop will be publicly available for inspection upon request, even though such information may not be posted in the workshop forums.

I. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau prepared an Initial Regulatory Flexibility Analysis (IRFA), included as part of the *Model Design PN,* 77 FR 38804, June 29, 2012, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in these Public Notices and the information posted online in the Virtual Workshops. We have reviewed the IRFA and have determined that is does not need to be supplemented.

B. Paperwork Reduction Act

5. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Filing Requirements

6. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325,

Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

7. *Virtual Workshop.* In addition to the usual methods for filing electronic comments, the Commission is allowing comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.* Persons wishing to examine the record in this proceeding are encouraged to examine the record on ECFS and the Virtual Workshop. Although Virtual Workshop commenters may choose to provide identifying information or may comment anonymously, anonymous comments will not be part of the record in this proceeding and accordingly will not be relied on by the Commission in reaching its conclusions in this rulemaking. The Commission will not rely on anonymous postings in reaching conclusions in this matter because of the difficulty in verifying the accuracy of information in anonymous postings. Should posters provide identifying information, they should be aware that although such information will not be posted on the blog, it will be publicly available for inspection upon request.

8. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

9. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Federal Communications Commission.

Kimberly A. Scardino,

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–15172 Filed 6–25–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2013–0076]

New Car Assessment Program (NCAP)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: This document requests public comment on the agency's planned update to the U.S. New Car Assessment Program (NCAP). This update would enhance the program's ability to recommend to motor vehicle consumers various vehicle models that contain rearview video systems that would substantially enhance the driver's ability to avoid backover crashes. For many years, NCAP has provided comparative information on the safety of new vehicles to assist consumers with vehicle purchasing decisions. NCAP was most recently upgraded for model year 2011 to include recommended crash avoidance technologies. Including this information in NCAP not only allows consumers to better determine which vehicle models have advanced crash avoidance safety features but also which of these advanced features are best able to help them avoid crashes.

DATES: You should submit your comments early enough to ensure that Docket Management receives them no later than July 26, 2013.

ADDRESSES: Comments should refer to the docket number above and be submitted by one of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• Hand Delivery: 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

• *Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

• *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78). For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Markus Price, Office of Vehicle Rulemaking, Telephone: 202–366–1810, Facsimile: 202–366–5930, NVS–121.

For NCAP logistics: Mr. Clarke Harper, Office of Crash Avoidance Standards, Telephone: 202–366–1810, Facsimile: 202–366–5930, NVS–120.

The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This document requests comment on the agency's plan to upgrade the U.S. New Car Assessment Program (NCAP) to include recommendations to motor vehicle consumers on vehicle models that contain rearview video systems that can substantially enhance the driver's ability to avoid a backover crash. The plan substitutes the rearview video systems for electronic stability control (ESC) as a recommended crash avoidance technology on *www.safercar.gov.* As ESC is now required equipment on vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, the agency believes that it is no longer necessary to include ESC as a recommended technology to consumers. NCAP provides comparative information on the safety performance and features of new vehicles to assist consumers with their vehicle purchasing decisions. The program was most recently upgraded for model year 2011 to include (among other changes) recommended crash avoidance technologies. By including rearview video systems as a

recommended technology in NCAP, the agency believes that it can help educate consumers on the important safety benefits of these systems and support the provision of this important safety technology to the American public before the effective date (for all vehicles [1]) of any final rule resulting from the agency's current rulemaking to amend the requirements of Federal motor vehicle safety standard (FMVSS) No. 111.[2]

Planned Upgrade to NCAP Is Separate From the Rulemaking To Amend FMVSS No. 111

Pursuant to the Cameron Gulbransen Kids Transportation Safety Act of 2007 (''K.T. Safety Act''),[3] the agency is conducting a rulemaking to amend FMVSS No. 111.[4] The agency would like to emphasize that any change to NCAP to encourage the installation of rearview video systems to assist drivers in avoiding backover crashes is separate from the agency's consideration of appropriate amendments to FMVSS No. 111. Any update to NCAP as a result of this request for comment is not a resolution to the rulemaking action to amend FMVSS No. 111, it does not replace the agency's efforts in that area, nor is it an alternative to completing the rulemaking process to amend FMVSS No. 111. However, the agency believes that it is appropriate to conduct this separate action to consider incorporating rearview video systems into NCAP.

The agency believes that there will be significant advantages in incorporating rearview video systems into NCAP at this point in time. In doing so, the agency believes that consumers will receive important information regarding the safety risks associated with backovers and the available vehicle models with an effective countermeasure that can assist the driver in avoiding backover crashes. As an added benefit, the agency believes that including rearview video systems in NCAP will afford manufacturers recognition for designing and installing these systems that can help drivers avoid backover crashes and incentivize further installation of these systems. By adding rearview video systems into NCAP at this time, the agency believes that the aforementioned advantages can be realized not only prior to the promulgation of a final rule to amend FMVSS No. 111 but also during any phase-in period following the final rule's promulgation.

Rearview Video Systems as a ''Recommended Advanced Technology Feature''

Beyond issuing star ratings based on the crashworthiness of vehicle models, NCAP currently already offers additional information to consumers regarding ''Recommended Advanced Technology Features'' through its Web site (*www.safercar.gov*). For each vehicle make/model, the Web site currently shows (in addition to a list of safety features) the model's five-star crashworthiness ratings and whether the vehicle model is equipped with any of three advanced crash avoidance safety technologies that NHTSA currently recommends to consumers.[5] The agency selected three advanced crash avoidance technologies to recommend to consumers starting in model year 2011 because those technologies (1) address a major crash problem, (2) have information to project their potential safety benefit, and (3) are able to be tested by available performance tests and procedures that can ensure an acceptable level of performance.[6]

At this point, the agency believes it is appropriate to include rearview video systems as opposed to ESC as a recommended crash avoidance technology on *www.safercar.gov.* While NCAP recommended ESC to consumers before ESC became required equipment on vehicles with a GVWR of 10,000 pounds or less, FMVSS No. 126 now requires ESC on all of those vehicles.[7] For that reason, there is no reason to continue ESC as a ''Recommended Advanced Technology Feature'' in NCAP. Having considered the available information on rearview video systems, the agency believes that such systems that provide drivers visual access to the area directly behind their vehicles that are associated with the highest crash risk meet the aforementioned criteria for incorporation into NCAP. In other words, rearview video systems address a major safety problem (backover crashes), the available information strongly indicates that they are effective in assisting drivers at avoiding backover crashes, and performance/test criteria are available to ensure that such systems perform adequately to address the backover safety problem.

As evidenced by the decision by Congress to pass the K.T. Safety Act, backover crashes constitute a major safety problem. Backover crashes cause a significant number of fatalities and injuries each year because drivers cannot see the area behind the vehicle where pedestrians can be located. The currently available information indicates that vehicles with a GVWR of 10,000 lbs. or less alone are involved in approximately 202 fatalities and 14,000 injuries per year.[8] Further, the research summarized in the NPRM to amend FMVSS No. 111 indicates that rearview video systems (which afford drivers a view of the area behind the vehicle) are effective in helping drivers avoid a backover crash. Thus, the agency believes that backover crashes are a major safety problem that can be reduced through an increased proliferation of rearview video systems.

As the available information indicates that such systems meet the agency's criteria for incorporation into NCAP as a recommended advanced crash avoidance technology, the agency is issuing this document to request comment on this planned update to the program. The agency believes that, through NCAP, the agency can help educate motor vehicle consumers on the important safety benefits that can be realized through rearview video systems and help support the proliferation of this important safety technology.

We note that the agency is currently also considering other updates to NCAP. On April 5, 2013, the agency published a request for comment in the **Federal Register** on a large variety of potential updates to NCAP (including various crash avoidance and crashworthiness technologies such as automatic collision notification systems, automatic braking systems, improved test dummies, testing for rear seat occupants, etc.).[9] While each technology being considered by NHTSA is at a different state of development, the agency believes that the available information on rearview video systems is such that the agency can quickly implement the relevant changes to NCAP to begin offering

[1] The proposal to amend FMVSS No. 111 covers all vehicles (except motorcycles and trailers) with a GVWR of 10,000 pounds or less. *See* 75 FR 76185.

[2] The current proposal to amend FMVSS No. 111 included a phase-in period covering three model years. *See* 75 FR 76185, 76188.

[3] Public Law 110–189, Feb. 28, 2008.

[4] *See generally* Docket No. NHTSA–2010–0162.

[5] The three technologies currently recommended to consumers on *www.safercar.gov* are: lane departure warning, forward collision warning, and electronic stability control.

[6] *See* 73 FR 40016, 40033.

[7] *See* 49 CFR Part 571.126, S8.4.

[8] These figures differ from the NPRM to amend FMVSS No. 111 because these figures have been updated with the latest information on the backover crash problem. As backover crashes often do not occur on public roads a large portion of the available information on this crash problem comes from the ''Not-in-Traffic Surveillance'' or ''NiTS'' system. At the time of the NPRM, only 1 year of NiTS data was available. However, the database was most recently updated in October 2012 with additional years of data. Combined with the information from other NHTSA databases, the agency now estimates the target population to be approximately 202 fatalities and 14,000 injuries per year.

[9] *See* 78 FR 20597.

consumers important information about the backover safety problem and the available countermeasures. The agency believes that updating NCAP to include rearview video systems is an appropriate change that can be accomplished relatively quickly without any impact on the agency's plans to implement additional technologies that are under consideration in the April, 2013 request for comment.

A Two-Phase Approach for Adding Rearview Video Systems to NCAP

In order to accomplish the goals outlined above as quickly as possible, the agency plans to use a two-phase approach to incorporate this change into NCAP. As described above, the agency provides information for each vehicle model on *www.safercar.gov* concerning the vehicle's five-star crashworthiness ratings, stating whether the vehicle model has a ''Recommended Advanced Technology Feature,'' and listing the major safety features available on the vehicle model. By leveraging these different sections of the Web site, the agency believes it can quickly inform consumers of the availability of this important safety technology through the following two phases.

- *Phase 1:* The agency would immediately begin to list rearview video systems in the ''safety feature'' section for each vehicle model on *www.safercar.gov* that has this safety feature available.
- *Phase 2:* As soon as the agency is able to verify that the vehicle model has a rearview video system meeting certain basic criteria (as further discussed below) the agency would recognize those vehicle models as having a ''Recommended Advanced Technology Feature'' on the *www.safercar.gov* Web site.

The agency believes that this two-phase approach minimizes the amount of time that is needed for the agency to begin providing information in the short term. At the same time, the agency believes that this approach would maximize the usefulness of the information available to consumers in the long run. In order to recommend rearview video systems as a technology to consumers that can help drivers avoid backover crashes, the agency would establish certain basic criteria that these rearview video systems installed in participating vehicle models must meet. Thus, under this approach, the agency would be able to begin providing information to consumers quickly under Phase 1 and follow up with additional information in Phase 2.[10]

We note that the advanced crash avoidance technologies that are currently recommended by NHTSA through NCAP (as ''Recommended Advanced Technology Features'') are shown on *www.safercar.gov* and not included on the Monroney label.[11] Our plan to update NCAP to adopt rearview video systems as a recommended technology feature is, at least initially, likewise to show the technology on that Web site and not on the vehicle's Monroney label. We are considering whether to incorporate additional advanced crash avoidance technologies into NCAP. When we have determined which additional technologies will be incorporated, we will consider whether we should initiate a rulemaking to determine whether and how the incorporated advanced technologies should be included on the Monroney label.

Basic Criteria for Recognizing a Model as Having a Recommended Rearview Video System

In order to recommend rearview video systems to the motor vehicle consumer, the agency would need to ensure that such systems are designed to address the backover safety problem (and not merely designed as a convenience feature aimed at assisting drivers in parking maneuvers). The agency believes that, due to the nature of NCAP as a consumer information program, the agency needs to ensure that the criteria for recommending a rearview video system to consumers appropriately distinguishes systems designed to assist drivers in avoiding backover crashes and does not misrepresent the capabilities of systems designed to assist drivers conducting parking maneuvers. Towards this end, the agency believes that three basic criteria are necessary. To be designed for the purpose addressing the backover safety problem, the agency believes that the rearview video system (at a minimum) needs to:

(1) Show a visual image of a minimum area behind the vehicle that is associated with the greatest crash risk,

(2) Show this area at a sufficient size so as to enable the driver to make judgments about the objects behind the vehicle, and

(3) Show this area quickly enough to provide the driver with the relevant information before he/she begins the backing maneuver.

Thus, for purposes of incorporating rearview video systems into NCAP as a recommended technology, the agency would (in Phase 2) recommend to consumers vehicle models with rearview video systems that meet field of view, image size, and response time[12] criteria that were proposed in the agency's NPRM to amend FMVSS No. 111. We believe that adopting these criteria from the FMVSS No. 111 NPRM appropriately ensures that the systems recommended by NCAP will be designed for the purpose of avoiding backover crashes. Further, these criteria from the FMVSS No. 111 NPRM have been developed for the purpose of providing an objective method for determining whether a rearview video system can address the safety problem.

Finally, the agency believes that these three criteria strike an appropriate balance between the agency's interest in recommending to consumers vehicles with systems that are designed to address a major safety problem (as opposed to assisting drivers in conducting parking maneuvers) and the agency's interest in avoiding the establishment of too many criteria that may discourage manufacturer participation in this aspect of NCAP.

Field of View and Image Size

The field of view and image size requirements from the FMVSS No. 111 NPRM are designed to ensure that rearview video systems afford drivers visual access to a 20-foot by 10-foot zone directly behind the vehicle. They further ensure that the image displayed to the driver is large enough to enable the driver to make judgments about the objects in the image and avoid a crash with those objects. The agency believes that these criteria apply to the most basic functions that the rearview video system needs to perform in order to address the backover safety problem. As discussed in the NPRM to amend FMVSS No. 111, we believe that the field of view criterion for a 20-foot by 10-foot zone[13] directly behind the

[10] While the agency believes that this two-phase approach can bring information regarding these systems to the consumers as soon as possible, the agency's planned approach would not require the completion of phase 1 before phase 2. In other words, if the agency is able to verify that the rearview video system installed on a vehicle model meets the aforementioned basic requirements the agency could list that vehicle model as having a ''Recommended Advanced Technology Feature'' immediately.

[11] The Monroney label is a label that is required to be affixed on a motor vehicle prior to the delivery of the vehicle to a dealer. *See* 15 U.S.C. 1232. This label is required to show certain safety ratings from NCAP.

[12] As discussed below, NCAP would specify a test procedure to evaluate the response time criterion proposed in the NPRM.

[13] The NPRM to amend FMVSS No. 111 proposed testing the field of view requirement by placing 7

vehicle covers the areas behind the vehicle that are associated with the greatest backover crash risk.[14] Further, the available research indicates that the image size criterion (that the test objects contained in the rearview image subtend to a visual angle of at least 5 minutes of arc [15]) will help ensure that drivers are able to make judgments about the objects contained in the rearview image.[16] By including these two criteria in our assessment of whether a particular vehicle model's rearview video system is listed as a ''Recommended Advanced Technology Feature,'' the agency believes that rearview video systems that are recommended to consumers will be designed to reasonably assist drivers in avoiding backover crashes. The agency plans to utilize the test procedures proposed in the NPRM to evaluate conformity with these criteria for the purposes of NCAP.[17]

Response Time

In addition, the response time requirement from the NPRM to amend FMVSS No. 111 is designed to ensure that the rearview image (meeting the criteria above) is shown to the driver in a timely fashion. The agency believes that this requirement is especially important because, regardless of the quality of the image shown to the driver, if the image is not shown before a driver begins a backing maneuver, then it is unlikely that the rearview video system will be able to assist the driver in avoiding a backover crash. Thus, we plan to adopt the 2.0 second response time requirement from the proposal to amend FMVSS No. 111 as a criterion for rearview video systems in NCAP.[18] As in the proposal to amend FMVSS No. 111, the agency plans to evaluate conformity with this criterion based on the time that the vehicle is shifted into reverse. In other words, the NCAP criterion would state that the rearview image must be displayed within 2.0 seconds after the vehicle transmission is shifted into reverse. As the agency explained in the FMVSS No. 111 NPRM, we believe the 2.0-second limit is appropriate given the amount of time necessary for rearview video systems to conduct the necessary system checks and the activation times that are achievable by liquid crystal displays.[19]

However, in response to the proposal, the agency received various comments from vehicle manufacturers stating that (depending on the initialization process of the vehicle tested) the response time of the rearview image can be delayed significantly if the vehicle is shifted into reverse immediately after starting the engine. The manufacturers further suggested that the agency adopt a vehicle initialization test procedure to condition the vehicle prior to testing for the 2.0-second response time. The agency recognizes that, for assessing conformity with the NCAP criteria, it is important to establish the state of the vehicle prior to testing for response time. Thus, in order to address the manufacturers' concerns, we plan to include the following vehicle conditioning procedure when assessing conformity with the NCAP response time criterion.

Image response time test procedure. The temperature inside the vehicle during this test is any temperature between 15°C and 25°C. Immediately prior to commencing the actions listed in subparagraphs (a)–(c) of this paragraph, all components of the rearview video system are in a powered off state. Then:

(a) open the driver's door,

(b) activate the starting system using the key,[20] and

(c) place the vehicle in reverse at any time not less than 4 seconds after the driver's door is opened.

Immediately after the vehicle is conditioned in accordance with the above procedure, the agency would select the reverse gear in the vehicle and measure the 2.0-second response time. We believe that this conditioning procedure will provide additional certainty to manufacturers regarding the conditions under which the agency would assess conformity with the NCAP 2.0-second response time criterion. Further we believe that this method will still ensure that the rearview image is available to the driver at a time that is appropriate for a driver relying on it to avoid a backover crash. Our naturalistic driving data [21] indicate that approximately 90% of the time drivers do not select the reverse gear to begin the backing maneuver less than 4.25 seconds after opening the vehicle's door. In other words, only approximately 10% of the time drivers enter their vehicle and select the reverse gear in less than 4.25 seconds. Thus, we believe that the vehicle conditioning procedure shown above reasonably approximates the real world conditions under which drivers would use these systems and that a vehicle conforming to the 2.0 second criteria under those test conditions would have the rearview image available for the driver in a timely fashion.

Public Participation

On what topics is the agency requesting comments?

This document requests comments on the agency's plan to incorporate rearview video systems into NCAP. However, this document is not intended to solicit comments concerning our proposed rule to amend FMVSS No. 111. The comment period on that proposed rule closed on April 18, 2011.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

test objects along the perimeter of the 20-foot by 10-foot zone behind the vehicle. *See* 75 FR 76186, 76244. The first row of test objects is place 1 foot behind the vehicle bumper, the second row is placed 10 feet behind the vehicle bumper, and the last row is placed 20 feet behind the vehicle bumper. The proposal required the entirety of each test object in the second and third rows to be visible in the rearview image and a minimum 150-mm wide portion of first row of objects be visible in order to accommodate the large variety of vehicles that have a GVWR of 10,000 lbs. or less. We plan to adopt this same testing methodology to assess conformity with the NCAP rearview video system criteria.

[14] *See* 75 FR 76186, 76227.

[15] The NPRM to amend FMVSS No. 111 proposed two requirements relating to image size. *See id.* First the horizontal width of the 3 test objects in the last row along the 20-foot by 10-foot zone subtend to an average visual angle of 5 minutes of arc. Second, for each of those test objects, the subtended angle must not subtend to any angle less than 3 minutes of arc. We plan to continue to use this approach in evaluating conformity with the NCAP rearview video system criteria.

[16] The available research cited in the NPRM to amend FMVSS No. 111 states that a driver can make judgments about an object if the object is shown at a subtended angle of 5 minutes of arc. *See* 75 FR 76186, 76229.

[17] The agency plans to utilize the test procedure described in S14.1 of the proposed regulatory text in the NPRM to amend FMVSS No. 111. *See* 75 FR 76186, 76246.

[18] *See* 75 FR 76186, 76245.

[19] *See* 75 FR 76186, 76230.

[20] The terms ''starting system'' and ''key'' have the same meanings that these terms have in FMVSS No. 114. *See* 49 CFR Part 571.114.

[21] These data are information NHTSA prepared in support of the research report titled ''On-Road Study of Drivers' Use of Rearview Video Systems.'' *See* Mazzae, E. N., et al. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS), National Highway Traffic Safety Administration, DOT HS 811 024. A summary of these naturalistic driving data prepared for that study (as it pertains to the length of time drivers take to select the reverse gear) is available in Docket No. NHTSA–2010–0162–0227.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you may submit a copy (two copies if submitting by mail or hand delivery), from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

Will the agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, the agency will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under Comments. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on: June 19, 2013 under authority delegated in 49 CFR 1.95.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–15208 Filed 6–21–13; 11:15 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 130501429–3429–01]

RIN 0648–XC659

Endangered and Threatened Wildlife; Proposed Rule To Revise the Code of Federal Regulations for Species Under the Jurisdiction of the National Marine Fisheries Service

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: We, NMFS, announce proposed revisions to the Code of Federal Regulations (CFR) to clarify and update the descriptions of species under NMFS' jurisdiction that are currently listed as threatened or endangered under the Endangered Species Act of 1973 (ESA). Revisions include format changes to our lists of threatened and endangered species, revisions to regulatory language explaining our lists, updates to the descriptions of certain listed West Coast salmonid species to add or remove hatchery stocks consistent with our recently completed five-year reviews under ESA section 4(c)(2), and corrections to regulatory text to fix inadvertent errors from previous rulemakings and update cross-references. We do not propose to add or remove any species to or from our lists, change the status of any listed species, or add or revise any critical habitat designation.

DATES: Comments and information regarding the proposed revisions must be received (See **ADDRESSES**) no later than 5 p.m. Pacific Time on August 26, 2013.

ADDRESSES: You may submit comments, information, or data, identified by the code NOAA–NMFS–2013–0100 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0100,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Maggie Miller, NMFS, Office of Protected Resources (301) 427–8403; for information on the 5-year status reviews of Pacific salmonids, contact Steve Stone, NMFS, Northwest Region (503) 231–2317. Copies of the 5-year status reviews can be found on our Web sites at *http://www.nmfs.noaa.gov/pr/listing/reviews.htm* and *http://www.nwr.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA provides for both NMFS and the U.S. Fish and Wildlife Service (FWS) to make determinations as to the endangered or threatened status of ''species'' in response to petitions or on their own initiative. In accordance with the ESA, we (NMFS) make determinations as to the threatened or endangered status of species by regulation. These regulations provide the text for each species listing and include the content required by the ESA Section 4(c)(1). We enumerate and maintain a list of species under our jurisdiction which we have determined to be threatened or endangered at 50

CFR 223.102 (threatened species) and 50 CFR 224.101 (endangered species) (hereafter referred to as the ''NMFS Lists''). The FWS maintains two master lists of all threatened and endangered species, i.e., both species under NMFS' jurisdiction and species under FWS' jurisdiction (the ''FWS Lists'') at 50 CFR 17.11 (threatened and endangered animals) and 50 CFR 17.12 (threatened and endangered plants). The term ''species'' for listing purposes under the ESA includes the following entities: species, subspecies, and, for vertebrates only, ''distinct population segments (DPSs).'' Pacific salmon are listed as ''evolutionarily significant units (ESUs),'' which are essentially equivalent to DPSs for the purpose of the ESA. For West Coast salmon and steelhead, many of the ESU and DPS descriptions include fish originating from specific artificial propagation programs (e.g., hatcheries) that, along with their naturally-produced counterparts, are included as part of the listed species.

We recently completed a 5-year review of the status of ESA-listed salmon ESUs and steelhead DPSs in California (76 FR 50447, August 15, 2011; and 76 FR 76386, December 7, 2011) and in Oregon, Idaho, and Washington (76 FR 50448; August 15, 2011). The ESA requires this regular review of listed species to determine whether a species should be delisted, reclassified, or whether the current classification should be retained (16 U.S.C. 1533(c)(2)). As a result of our review, we identified several errors, omissions, and updates that warrant revising the NMFS and FWS Lists for the sake of accuracy and improved readability. We also identified cross-referencing errors in our regulations at 50 CFR 223. In addition, we are taking advantage of this proposed rule to correct or clarify text and update the list formats for all species under NMFS' jurisdiction.

Below we summarize the proposed revisions. In the regulatory text at the end of this **Federal Register** notice are (1) tables with the revised format depicting the NMFS Lists with the full text of the species' descriptions that we propose to update with this notice, and (2) the full text of proposed corrections and clarifications to our regulations at 50 CFR 223. After considering public comments on these proposed revisions, we will finalize this proposed rule and then coordinate with the FWS to ensure that the changes are reflected in the FWS Lists at 50 CFR 17.11 and 17.12.

Proposed Revisions to the NMFS Lists

General Changes for Improved Consistency and Accuracy

Endangered Species Table: For consistency, we propose to combine the separate tables and paragraphs in 50 CFR 224.101 into one table, as we have done for the threatened species table at 50 CFR 223.102.

Introductory Text: We propose adding text to both 50 CFR parts 223 and 224 introducing the table format for the NMFS Lists and explaining the categories of information presented in the tables. This will make the NMFS regulations more consistent with the FWS regulations and will aid the reader in understanding the information presented.

Order of Species' Names: We propose to reorder the species' entries alphabetically in both NMFS Lists based on the species' common name and to remove the numbering system currently used in the NMFS table of threatened species. For example, the current entry in the threatened species list at 50 CFR 223.102, ''(a)(23) Puget Sound steelhead DPS,'' will be identified as ''Steelhead (Puget Sound DPS)'' and will come after ''Salmon'' but before ''Sturgeon.'' This will make it easier to search our lists for species of interest and is consistent with the format of the FWS Lists. If the species has no common name, it will be listed alphabetically based on its scientific name. The numbering has not provided a benefit and has made it more complicated to add or delist species.

ESA Rules: In the NMFS Lists, we propose to add a new ''ESA rules'' column similar to the ''Special rules'' column used in the FWS Lists. This new column will provide a cross-reference to ESA rules applicable to the species, such as protective regulations for threatened species.

Citations for Listing Determinations: Currently, the column entitled ''Citation(s) for listing determination(s)'' provides, for some species, a cite to the first page of the **Federal Register** notice containing the listing determination and, for other species, a cite to the page containing the regulatory text for that species. We are standardizing the information provided in this column so that all citations identify the first page of the relevant **Federal Register** notice.

Critical Habitat Citations: In both NMFS Lists, we propose to change the entries under the ''Citation(s) for critical habitat designation(s)'' column to refer to the specific section in 50 CFR 226 (instead of the **Federal Register** notice) where the critical habitat description is found. Doing so will provide a more direct reference to the applicable regulatory text and maps designating critical habitat and ensure that citations track the most up-to-date descriptions of designated areas. We also propose to shorten the column heading to ''Critical habitat.''

Description of Listed Entity: In both NMFS Lists, we propose to change the ''Where listed'' column to ''Description of listed entity.'' As currently used, the ''Where listed'' column contains both substantive information, for example, descriptions of ESUs/DPSs, and non-substantive information, such as the range where the species may normally be found. To avoid confusion, the ''Description of listed entity'' column will now include only information that is necessary to identify the listed entity that constitutes the ''species'' for purposes of the ESA. Accordingly, the ''Description of listed entity'' column will explain whether the listed entity is an entire taxonomic species, a subspecies, or a DPS and will provide a description for DPSs. Information regarding the general geographic range of a listed species may still be found in the **Federal Register** notice designating that species for listing and referenced in the ''Citations for listing determination(s)'' column. Additionally, we have standardized the descriptions for each species. For example, current DPS descriptions use varying terminology, such as ''spawned in,'' ''from,'' or ''hatched in,'' to indicate that animals born within a given geographic area comprise the DPS. We propose standardizing our terminology by consistently using the phrase ''originating from,'' to describe the composition of such DPSs, unless different wording is necessary for accuracy. One specific change for listed steelhead populations is to clarify that steelhead DPSs include ''all naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers.''

Endangered Species at 50 CFR 224.101

Revisions to Endangered Species Descriptions

Below we summarize the primary proposed revisions to the descriptions of our endangered species listed in 50 CFR 224.101. Based on our recently completed 5-year reviews of the status of ESA-listed salmon ESUs and steelhead DPSs in California, Oregon, Idaho, and Washington (see *http://www.nmfs.noaa.gov/pr/listing/reviews.htm* and *http://www.nwr.noaa.gov* for status review documents), some of the descriptions of our endangered species must be revised to take into account the addition or

termination of specific artificial propagation programs which contribute individuals to that ESU or DPS. These are identified as ''key changes.'' The addition or termination of these artificial propagation programs does not constitute a listing or delisting of an ESU or DPS, but simply a revision to reflect the actual current composition of the listed ESU or DPS. Other changes to the descriptions include standardization of terminology to improve consistency and accuracy in our listings. Where a ''key change'' is not indicated for a specific revised listing description, then the only change to the description is for standardization of terminology.

Salmon, Chinook (Sacramento River Winter-Run ESU)

We propose to revise this description to read: ''Naturally spawned winter-run Chinook salmon originating from the Sacramento River and its tributaries. Also, winter-run Chinook salmon from one artificial propagation program: the Livingston Stone National Fish Hatchery.'' The key change proposed for this ESU is: One artificial propagation program has been terminated (the captive broodstock program maintained at Livingston Stone National Fish Hatchery and the University of California Bodega Marine Laboratory) and is being removed from the list of artificial propagation programs that are part of this ESU.

Salmon, Chinook (Upper Columbia River Spring-Run ESU)

We propose to revise this description to read: ''Naturally spawned spring-run Chinook salmon originating from Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam (excluding the Okanogan River subbasin). Also, spring-run Chinook salmon from six artificial propagation programs: The Twisp River Program; Chewuch River Program; Methow Program; Winthrop National Fish Hatchery Program; Chiwawa River Program; and the White River Program.''

Salmon, Sockeye (Snake River ESU)

We propose to revise this description to read: ''Naturally spawned anadromous and residual sockeye salmon originating from the Snake River basin. Also, sockeye salmon from one artificial propagation program: The Redfish Lake Captive Broodstock Program.''

Threatened Species at 50 CFR 223.102

Revisions to Threatened Species Descriptions

Below we summarize the primary proposed revisions to the descriptions of our threatened species listed in 50 CFR 223.102. Based on our recently completed 5-year reviews of the status of ESA-listed salmon ESUs and steelhead DPSs in California, Oregon, Idaho, and Washington (see *http://www.nmfs.noaa.gov/pr/listing/reviews.htm* and *http://www.nwr.noaa.gov* for status review documents), some of the descriptions of our threatened species must be revised to take into account the addition or termination of specific artificial propagation programs which contribute individuals to that ESU or DPS. These are identified as ''key changes.'' The addition or termination of these artificial propagation programs does not constitute a listing or delisting of an ESU or DPS, but simply a revision to the composition of the listed ESU or DPS. Other changes to the descriptions include standardization of terminology to improve consistency and accuracy in our listings. Where a ''key change'' is not indicated for a specific revised listing description, then the only change to the description is for standardization of terminology.

Eulachon (Southern DPS)

We propose to revise this description to read: ''Eulachon originating from the Skeena River in British Columbia south to and including the Mad River in northern California.'' This is consistent with the description of this DPS provided in our original listing determination (75 FR 13012), however the description was inadvertently omitted from the current NMFS list in the CFR.

Salmon, Chinook (California Coastal ESU)

We propose to revise this description to read: ''Naturally spawned Chinook salmon originating from rivers and streams south of the Klamath River to and including the Russian River.'' The key changes proposed for this ESU include: Seven artificial propagation programs have been terminated (the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs) and are being removed from the list of artificial propagation programs that are part of this ESU.

Salmon, Chinook (Lower Columbia River ESU)

We propose to revise this description to read: ''Naturally spawned Chinook salmon originating from the Columbia River and its tributaries downstream of a transitional point east of the Hood and White Salmon Rivers, and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Not included in this ESU are: (1) Spring-run Chinook salmon originating from the Clackamas River; (2) fall-run Chinook salmon originating from Upper Columbia River Bright hatchery stocks that spawn in the mainstem Columbia River below Bonneville Dam and in other tributaries upstream from the dam to the Hood and White Salmon Rivers; (3) spring-run Chinook salmon originating from the Round Butte Hatchery (Deschutes River, Oregon) and spawning in the Hood River; (4) spring-run Chinook salmon originating from the Carson National Fish Hatchery and spawning in the Wind River; and (5) naturally spawning Chinook salmon originating from the Rogue River Fall Chinook Program. This ESU does include Chinook salmon from 20 artificial propagation programs: The Sea Resources Tule Chinook Program; Big Creek Tule Chinook Program; Astoria High School Salmon-Trout Enhancement Program (STEP) Tule Chinook Program; Warrenton High School STEP Tule Chinook Program; Cowlitz Tule Chinook Program; North Fork Toutle Tule Chinook Program; Kalama Tule Chinook Program; Washougal River Tule Chinook Program; Spring Creek National Fish Hatchery (NFH) Tule Chinook Program; Cowlitz Spring Chinook Programs in the Upper Cowlitz River and the Cispus River; Friends of the Cowlitz Spring Chinook Program; Kalama River Spring Chinook Program; Lewis River Spring Chinook Program; Fish First Spring Chinook Program; Sandy River Hatchery (Oregon Department of Fish and Wildlife Stock #11); Deep River Net Pens Tule Fall Chinook Program; Klaskanine Hatchery Tule Fall Chinook Program; Bonneville Hatchery Tule Fall Chinook Program; and the Little White Salmon NFH Tule Fall Chinook Program.'' The key changes proposed for this ESU include: (1) The Elochoman River Tule Chinook Program has been terminated (the last adult returns will be in 2013) and is being removed from the list of artificial propagation programs that are part of this ESU; (2) four new programs (Deep River Net Pens Tule Fall Chinook, Klaskanine Hatchery Tule Fall Chinook, Bonneville Hatchery Tule Fall Chinook, and Little White Salmon National Fish Hatchery Tule Fall Chinook programs) are now considered part of this ESU; and (3) clarifications—first reported at the time of listing (64 FR 14308; March 24, 1999)—about the status of non-ESU Chinook salmon that

are known to spawn within the range of the Lower Columbia River ESU.

Salmon, Chinook (Puget Sound ESU)

We propose to revise this description to read: ''Naturally spawned Chinook salmon originating from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, Chinook salmon from 27 artificial propagation programs: The Kendall Creek Hatchery Program; Marblemount Hatchery Program (spring yearlings, spring subyearlings, and summer-run); Harvey Creek Hatchery Program (summer-run and fall-run); Whitehorse Springs Pond Program; Wallace River Hatchery Program (yearlings and subyearlings); Tulalip Bay Program; Issaquah Hatchery Program; Soos Creek Hatchery Program; Icy Creek Hatchery Program; Keta Creek Hatchery Program; White River Hatchery Program; White Acclimation Pond Program; Hupp Springs Hatchery Program; Voights Creek Hatchery Program; Diru Creek Program; Clear Creek Program; Kalama Creek Program; George Adams Hatchery Program; Rick's Pond Hatchery Program; Hamma Hamma Hatchery Program; Dungeness/Hurd Creek Hatchery Program; Elwha Channel Hatchery Program; and the Skookum Creek Hatchery Spring-run Program.'' The key changes proposed for this ESU include: (1) The Marblemount Hatchery fall Chinook program has been terminated (the last adult returns will be in 2013) and is being removed from the list of artificial propagation programs that are part of this ESU; and (2) two new programs (Skookum Creek Hatchery spring-run Chinook and Harvey Creek Hatchery fall-run Chinook) are now considered part of this ESU.

Salmon, Chinook (Snake River Fall-Run ESU)

We propose to revise this description to read: ''Naturally spawned fall-run Chinook salmon originating from the mainstem Snake River below Hells Canyon Dam and from the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins. Also, fall-run Chinook salmon from four artificial propagation programs: The Lyons Ferry Hatchery Program; Fall Chinook Acclimation Ponds Program; Nez Perce Tribal Hatchery Program; and the Oxbow Hatchery Program.''

Salmon, Chinook (Snake River Spring/Summer-Run ESU)

We propose to revise this description to read: ''Naturally spawned spring/summer-run Chinook salmon originating from the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins. Also, spring/summer-run Chinook salmon from 11 artificial propagation programs: The Tucannon River Program; Lostine River Program; Catherine Creek Program; Lookingglass Hatchery Program; Upper Grande Ronde Program; Imnaha River Program; Big Sheep Creek Program; McCall Hatchery Program; Johnson Creek Artificial Propagation Enhancement Program; Pahsimeroi Hatchery Program; and the Sawtooth Hatchery Program.'' The key changes proposed for this ESU include: (1) Three artificial propagation programs (Lemhi River Captive Rearing Experiment Program, East Fork Captive Rearing Experiment Program, and West Fork Yankee Fork Captive Rearing Experiment Program) have been terminated (the last adult returns were in 2009) and are being removed from the list of programs that are part of this ESU; and (2) three captive broodstock programs (Tucannon River, Lostine River, and Catherine Creek) are transitioning to naturally returning fish but will remain as artificial propagation programs that are part of the ESU.

Salmon, Chinook (Upper Willamette River ESU)

We propose to revise this description to read: ''Naturally spawned spring-run Chinook salmon originating from the Clackamas River and from the Willamette River and its tributaries above Willamette Falls. Also, spring-run Chinook salmon from six artificial propagation programs: The McKenzie River Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #23); Marion Forks Hatchery/North Fork Santiam River Program (ODFW Stock #21); South Santiam Hatchery Program (ODFW Stock #24) in the South Fork Santiam River and Mollala River; Willamette Hatchery Program (ODFW Stock #22); and the Clackamas Hatchery Program (ODFW Stock #19).'' The key changes proposed for this ESU include: (1) The South Santiam Hatchery Program (ODFW Stock #24) in the Calapooia River has been terminated (the last adult returns were in 2008) and is being removed from the list of artificial propagation programs that are part of this ESU; and (2) two hatchery stock identification numbers (ODFW Stocks #23 and #24) were incorrectly identified in the NMFS regulations and are now correctly assigned to the appropriate artificial propagation programs.

Salmon, Chum (Columbia River ESU)

We propose to revise this description to read: ''Naturally spawned chum salmon originating from the Columbia River and its tributaries in Washington and Oregon. Also, chum salmon from three artificial propagation programs: The Chinook River Program (Sea Resources Hatchery); Grays River Program; and the Washougal River Hatchery/Duncan Creek Hatchery Program.''

Salmon, Chum (Hood Canal Summer-Run ESU)

We propose to revise this description to read: ''Naturally spawned summer-run chum salmon originating from Hood Canal and its tributaries as well as from Olympic Peninsula rivers between Hood Canal and Dungeness Bay (inclusive). Also, summer-run chum salmon from four artificial propagation programs: The Hamma Hamma Fish Hatchery Program; Lilliwaup Creek Fish Hatchery Program; Tahuya River Program; and the Jimmycomelately Creek Fish Hatchery Program.'' The key changes proposed for this ESU include: (1) Four artificial propagation programs (Quilcene National Fish Hatchery, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, and Chimacum Creek Fish Hatchery) have been terminated (the last adult returns were in 2008) and are being removed from the list of programs that are part of this ESU; and (2) the Union River program (originally part of a combined Union River/Tahuya River program) has been terminated leaving just the Tahuya River program as part of the ESU.

Salmon, Coho (Lower Columbia River ESU)

We propose to revise this description to read: ''Naturally spawned coho salmon originating from the Columbia River and its tributaries downstream from the Big White Salmon and Hood Rivers (inclusive) and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Also, coho salmon from 23 artificial propagation programs: The Grays River Program; Sea Resources Hatchery Program; Peterson Coho Project; Big Creek Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #13); Astoria High School Salmon-Trout Enhancement Program (STEP) Coho Program; Warrenton High School STEP Coho Program; Cathlamet High School Future Farmers of America Type-N Coho Program; Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers; Cowlitz Game and

Anglers Coho Program; Friends of the Cowlitz Coho Program; North Fork Toutle River Hatchery Program; Kalama River Type-N Coho Program; Kalama River Type-S Coho Program; Lewis River Type-N Coho Program; Lewis River Type-S Coho Program; Fish First Wild Coho Program; Fish First Type-N Coho Program; Syverson Project Type-N Coho Program; Washougal River Type-N Coho Program; Eagle Creek National Fish Hatchery Program; Sandy Hatchery Program (ODFW Stock #11); and the Bonneville/Cascade/Oxbow Complex (ODFW Stock #14) Hatchery Program.'' The key changes proposed for this ESU include: (1) The Elochoman Type-S and Type-N Coho programs have been terminated (the last adult returns were in 2010) and are being removed from the list of artificial propagation programs that are part of this ESU; and (2) one program (Washougal River Type-N Coho Program) was inadvertently omitted from the list of artificial propagation programs and is now being identified as part of this ESU.

Salmon, Coho (Oregon Coast ESU)

We propose to revise this description to read: ''Naturally spawned coho salmon originating from coastal rivers south of the Columbia River and north of Cape Blanco. Also, coho salmon from one artificial propagation program: The Cow Creek Hatchery Program (Oregon Department of Fish and Wildlife Stock #18).'' The key change proposed for this ESU is a correction to the stock identification number for the Cow Creek Hatchery Program.

Steelhead (California Central Valley DPS)

We propose to revise this description to read: ''Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Sacramento and San Joaquin Rivers and their tributaries; excludes such fish originating from San Francisco and San Pablo Bays and their tributaries. This DPS does include steelhead from two artificial propagation programs: The Coleman National Fish Hatchery Program, and the Feather River Fish Hatchery Program.'' The key change proposed for this DPS involves identifying two artificial propagation programs that are part of this DPS (the Coleman National Fish Hatchery Program and the Feather River Fish Hatchery Program) that were identified in the **Federal Register** notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR.

Steelhead (Central California Coast DPS)

We propose to revise this description to read: ''Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Russian River to and including Aptos Creek, and all drainages of San Francisco and San Pablo Bays eastward to Chips Island at the confluence of the Sacramento and San Joaquin rivers. Also, steelhead from two artificial propagation programs: The Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project).'' The key change proposed for this DPS involves identifying two artificial propagation programs that are part of this DPS (the Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project) that were identified in the **Federal Register** notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR.

Steelhead (Lower Columbia River DPS)

We propose to revise this description to read: ''Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from rivers between the Cowlitz and Wind Rivers (inclusive) and the Willamette and Hood Rivers (inclusive); excludes such fish originating from the upper Willamette River basin above Willamette Falls. This DPS does include steelhead from seven artificial propagation programs: The Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program (Oregon Department of Fish and Wildlife (ODFW) Stock #122); Sandy Hatchery Late Winter-run Program (ODFW Stock #11); Hood River Winter-run Program (ODFW Stock #50); and the Lewis River Wild Late-run Winter Steelhead Program.'' The key changes proposed for this DPS include identifying artificial propagation programs that are part of this DPS that were identified in the **Federal Register** notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR. Also, based on our recent 5-year review of ESA-listed salmonids (76 FR 50448; August 15, 2011), the following programs are now being included as part of this DPS: The Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program (Oregon Department of Fish and Wildlife (ODFW) Stock #122); Sandy Hatchery Late Winter-run Program (ODFW Stock #11); Hood River Winter-run Program (ODFW Stock #50); and the Lewis River Wild Late-run Winter Steelhead Program.

Steelhead (Middle Columbia River DPS)

We propose to revise this description to read: ''Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Wind and Hood Rivers (exclusive) to and including the Yakima River; excludes such fish originating from the Snake River basin. This DPS does include steelhead from seven artificial propagation programs: The Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program (Oregon Department of Fish and Wildlife (ODFW) Stock #91); and the Deschutes River Program (ODFW Stock #66). This DPS does not include steelhead that are designated as part of an experimental population.'' The key changes proposed for this DPS include identifying artificial propagation programs that are part of this DPS that were identified in the **Federal Register** notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR. Also, based on our recent 5-year review of ESA-listed salmonids (76 FR 50448; August 15, 2011), the following programs are now being included as part of this DPS: The Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program (Oregon Department of Fish and Wildlife (ODFW) Stock #91); and the Deschutes River Program (ODFW Stock #66).

Steelhead (Middle Columbia River DPS–XN)

We recently designated a nonessential experimental population of Middle Columbia River steelhead (78 FR 2893, Jan. 15, 2013). We propose to add an entry for this experimental population onto the NMFS list to provide the public with a description of this experimental population, a citation to the **Federal Register** notice, and indicate ESA rules that apply to this population. We propose to add the description: ''Middle Columbia River steelhead only when, and at such times as, they are found above Butte Dam.''

Steelhead (Puget Sound DPS)

We propose to revise this description to read: ''Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, steelhead from six artificial propagation programs: The Green River Natural Program; White River Winter Steelhead Supplementation Program; Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers; and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program.'' The key changes proposed for this DPS include: (1) The Hamma Hamma River Hatchery program has been terminated (the last adult returns were in 2010) and is being removed from the list of artificial propagation programs that are part of this DPS; and (2) five new programs (the White River Winter Steelhead Supplementation Program, three Hood Canal Steelhead Supplementation off-station projects (Dewatto River, Skokomish River, and Duckabush River), and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program) are now considered part of this DPS.

Steelhead (Snake River Basin DPS)

We propose to revise this description to read: ''Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Snake River basin. Also, steelhead from six artificial propagation programs: The Tucannon River Program; Dworshak National Fish Hatchery Program; Lolo Creek Program; North Fork Clearwater Program; East Fork Salmon River Program; and the Little Sheep Creek/Imnaha River Hatchery Program (Oregon Department of Fish and Wildlife Stock #29).'' The key changes proposed for this DPS include identifying artificial propagation programs that are part of this DPS that were identified in the **Federal Register** notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR. Also, based on our recent 5-year review of ESA-listed salmonids (76 FR 50448; August 15, 2011), the following programs are now being included as part of this DPS: The Tucannon River Program; Dworshak National Fish Hatchery Program; Lolo Creek Program; North Fork Clearwater Program; East Fork Salmon River Program; and the Little Sheep Creek/Imnaha River Hatchery Program (Oregon Department of Fish and Wildlife Stock #29).

Steelhead (Upper Columbia River DPS)

We propose to revise this description to read: ''Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Yakima River to the U.S.-Canada border. Also, steelhead from six artificial propagation programs: The Wenatchee River Program; Wells Hatchery Program (in the Methow and Okanogan Rivers); Winthrop National Fish Hatchery Program; Omak Creek Program; and the Ringold Hatchery Program.''

Steelhead (Upper Willamette River DPS)

We propose to revise this description to read: ''Naturally spawned anadromous winter-run *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Willamette River and its tributaries upstream of Willamette Falls to and including the Calapooia River.''

Correcting Amendments to Agency Regulations at 50 CFR Part 223

During our review of the NMFS Lists we discovered minor errors in our regulations at 50 CFR 223, which specify the protections afforded under ESA section 4(d) to various threatened species. We are proposing to make the following revisions to correct these errors:

(1) We propose to correct the grammar in our regulations at 50 CFR 223.101(a) and 50 CFR 223.201(b)(1). In 50 CFR 223.101(a) we are replacing the word ''governing'' with ''govern'' and in 50 CFR 223.201(b)(1) we are removing the phrase '' in accordance with the'', which was added in error.

(2) Due to an oversight that occurred when we revised our NMFS List of threatened species in 2006 (71 FR 38270; July 6, 2006), our regulations at 50 CFR 223.203 incorrectly refer to the ''*Marine Mammals''* portion of our NMFS List at 50 CFR 223.102(a) when, instead, they should have referred to ''*Fishes''* at 50 CFR 223.102(c). However, as we have proposed to discontinue numbering species in the threatened lists and instead sort all threatened species in the table alphabetically, all future references to the numbered salmonid listings at 50 CFR 223.102(c) will be changed to reference the entire NMFS List at ''223.102.'' Furthermore, we propose to modify the text in 50 CFR 223.203 to clarify that the regulations are specific to threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*), and not applicable to other anadromous fishes (e.g., eulachon). Therefore, we propose to change the current language in the regulations from ''threatened species of salmonids listed'' to ''threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed'';

(3) Our regulations at 50 CFR 223.208 currently refer to corals listed as threatened at ''223.102(d)''; however, for the reasons previously described in this notice, we propose to discontinue numbering the species in our NMFS Lists, and therefore propose to change these regulations to refer to the entire NMFS List at ''223.102.'' Similarly, our regulations at 50 CFR 223.210 and 50 CFR 223.211 currently refer to the Southern DPS of North American green sturgeon listed at ''223.102(c)(1)'' and the Southern DPS of spotted seal listed at ''223.102(a)(3),'' respectively. We propose to change these regulations to refer to the entire threatened NMFS List at ''223.102.''

References

Copies of previous **Federal Register** notices and related reference materials are available on the Internet at *http://www.nmfs.noaa.gov/pr/listing/reviews.htm, http://www.nwr.noaa.gov,* or upon request (see **FOR FURTHER INFORMATION CONTACT** section above).

Classification

Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Executive Order 13211

This proposed rule simply updates sections 223 and 224 of the CFR with information that has already been approved or involves format changes, none of which could result in economic impacts. Therefore, the economic analysis requirements of the Regulatory Flexibility Act and Executive Order 12866 are not applicable.

Federalism

In accordance with Executive Order 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. The proposed revisions may have some benefit to state and local resource agencies in that the ESA-listed species addressed in this rulemaking are more clearly and consistently described.

Civil Justice Reform

The Department of Commerce has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. In keeping with that Order, we are proposing revisions to our

descriptions of ESA-listed species that will improve the clarity and general draftsmanship of our regulations.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act of 1969 (NEPA)

This proposed rule clarifies and updates the descriptions of species under NMFS' jurisdiction that are currently listed as threatened or endangered under the ESA and thus primarily administrative in nature. As such, NMFS has determined this proposed rule is categorically excluded from further NEPA review by NOAA Administrative Order 216–6, paragraph 6.03c.3(i). No extraordinary circumstances concerning this action exist. Therefore, NMFS will not prepare an Environmental Assessment or Environmental Impacts statement for the rule.

Government-to-Government Relationship With Tribes

Executive Order 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This proposed rule does not impose substantial direct compliance costs on Indian tribal governments or communities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this final rule. Nonetheless, during our 5-year review of salmon and steelhead we solicited information from the tribes, met with several tribal governments and associated tribal fisheries commissions, and provided the opportunity for all interested tribes to comment on the proposed changes to the species' status and descriptions and discuss any concerns they may have. We will continue to inform potentially affected tribal governments, solicit their input, and coordinate on future management actions pertaining to the listed species addressed in this proposed rule.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 18, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. Revise § 223.101 paragraph (a) to read as follows:

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

* * * * *

■ 3. Revise § 223.102 to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

(a) The table below identifies the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened pursuant to section 4(a) of the Act, as well as species treated as threatened because they are sufficiently similar in appearance to threatened species, and experimental populations of threatened species.

(b) The columns entitled ''Common name,'' ''Scientific name,'' and ''Description of listed entity'' define the species within the meaning of the Act. In the ''Common name'' column, experimental populations are identified as ''XE'' for essential populations or ''XN'' for nonessential populations. Species listed based on similarity of appearance are identified as ''S/A.'' Although a column for ''Common name'' is included, common names cannot be relied upon for identification of any specimen, because they may vary greatly in local usage. The ''Scientific name'' column provides the most recently accepted scientific name, relying to the extent practicable on the *International Code of Zoological Nomenclature.* In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The ''Description of listed entity'' column identifies whether the listed entity comprises the entire species, a subspecies, or a distinct population segment (DPS) and provides a description for any DPSs. Unless otherwise indicated in the ''Description of listed entity'' column, all individual members of the listed entity and their progeny retain their listing status wherever found, including individuals in captivity. Information regarding the general range of the species, subspecies, or DPS may be found in the **Federal Register** notice cited in the ''Citation(s) for listing determination(s)'' column.

(c) The ''Citation(s) for listing determination(s)'' column provides reference to the **Federal Register** notice(s) determining the species' status under the Act. The abbreviation ''(SPR)'' (significant portion of its range) after a citation indicates that the species was listed based on its status in a significant portion of its range. If a citation does not include the ''(SPR)'' notation, it means that the species was listed based on its status throughout its entire range. For ''(SPR)'' listings, a geographical description of the SPR may be found in the referenced **Federal Register** notice. The ''(SPR)'' notation serves an informational purpose only and does not imply any limitation on the application of the prohibitions or restrictions of the Act or implementing rules.

(d) The ''Critical habitat'' and ''ESA rules'' columns provide cross-references to other sections in this part and part 226. The term ''NA'' appearing in either of these columns indicates that there are no critical habitat designations or ESA rules for that species. However, all other applicable rules in parts 222 through

226 and part 402 still apply to that species. Also, there may be other rules in this title that relate to such wildlife. The ''ESA rules'' column is not intended to list all Federal, state, tribal, or local governmental regulations that may apply to the species.

(e) The threatened species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals:					
Sea lion, Steller (Eastern DPS).	*Eumetopias jubatus*	Steller sea lions born in the wild east of 144° W. Long. Also, Steller sea lions born in captivity whose mother was born in the wild east of 144° W. Long., and progeny of these captives.	55 FR 13488, Apr 10, 1990; 62 FR 24345, May 5, 1997.	226.202	223.202, 226.202
Seal, Arctic ringed	*Phoca (=Pusa) hispida hispida.*	Entire subspecies	77 FR 76706, Dec 28, 2012	NA	NA
Seal, Baltic ringed	*Phoca (=Pusa) hispida botnica.*	Entire subspecies	77 FR 76706, Dec 28, 2012	NA	NA
Seal, bearded (Beringia DPS).	*Erignathus barbatus nauticus*	Bearded seals originating from breeding areas in the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E. Long. (Novosibirskiye) and 130° W. Long., and east of 157° E. Long or east of the Kamchatka Peninsula.	77 FR 76740, Dec 28, 2012	NA	NA
Seal, bearded (Okhotsk DPS).	*Erignathus barbatus nauticus*	Bearded seals originating from breeding areas in the Pacific Ocean west of 157° E. Long. or west of the Kamchatka Peninsula.	77 FR 76740, Dec 28, 2012	NA	NA
Seal, Guadalupe fur	*Arctocephalus townsendi*	Entire species	50 FR 51252, Dec 16, 1985	NA	223.201
Seal, Okhotsk ringed	*Phoca (=Pusa) hispida ochotensis.*	Entire subspecies	77 FR 76706, Dec 28, 2012	NA	NA
Seal, spotted (Southern DPS).	*Phoca largha*	Spotted seals originating from breeding areas in the Pacific Ocean south of 43° N. Lat.	75 FR 65239, Oct 22, 2010	NA	223.211
Sea Turtles: [2]					
Sea turtle, green	*Chelonia mydas*	Entire species, except when listed as endangered under § 224.101	43 FR 32800, Jul 28, 1978	226.208	223.205, 223.206, 223.207
Sea turtle, loggerhead (Northwest Atlantic Ocean DPS)	*Caretta caretta*	Loggerhead sea turtles originating from the Northwest Atlantic Ocean west of 40° W. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, loggerhead (South Atlantic Ocean DPS)	*Caretta caretta*	Loggerhead sea turtles originating from the South Atlantic Ocean west of 20° E. Long. and east of 67° W. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, loggerhead (Southeast Indo-Pacific Ocean DPS)	*Caretta caretta*	Loggerhead sea turtles originating from the Southeast Indian Ocean east of 80° E. Long. and from the South Pacific Ocean west of 141° E. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, loggerhead (Southwest Indian Ocean DPS)	*Caretta caretta*	Loggerhead sea turtles originating from the Southwest Indian Ocean west of 80° E. Long., and east of 20° E. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, olive ridley	*Lepidochelys olivacea*	Entire species, except when listed as endangered under § 224.101	43 FR 32800, Jul 28, 1978	NA	223.205, 223.206, 223.207
Fishes:					
Eulachon (Southern DPS)	*Thaleichthys pacificus*	Eulachon originating from the Skeena River in British Columbia south to and including the Mad River in northern California.	75 FR 13012, Mar 18, 2010	226.222	NA
Rockfish, canary (Puget Sound/Georgia Basin DPS).	*Sebastes pinniger*	Canary rockfish originating from Puget Sound and the Georgia Basin	75 FR 22276, Apr 28, 2010	NA	NA
Rockfish, yelloweye (Puget Sound/Georgia Basin DPS).	*Sebastes ruberrimus*	Yelloweye rockfish originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010	NA	NA
Salmon, Chinook (California Coastal ESU).	*Oncorhynchus tshawytscha*	Naturally spawned Chinook salmon originating from rivers and streams south of the Klamath River to and including the Russian River.	70 FR 37160, Jun 28, 2005	226.211	223.203
Salmon, Chinook (Central Valley spring-run ESU).	*Oncorhynchus tshawytscha*	Naturally spawned spring-run Chinook salmon originating from the Sacramento River and its tributaries. Also, spring-run Chinook salmon from the Feather River Hatchery spring-run Chinook Program.	70 FR 37160, Jun 28, 2005	226.211	223.203
Salmon, Chinook (Lower Columbia River ESU)	*Oncorhynchus tshawytscha*	Naturally spawned Chinook salmon originating from the Columbia River and its tributaries downstream of a transitional point east of the Hood and White Salmon Rivers, and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Not included in this DPS are: (1) Spring-run Chinook salmon originating from the Clackamas River; (2) fall-run Chinook salmon originating from Upper Columbia River Bright hatchery stocks, that spawn in the mainstem Columbia River below Bonneville Dam and in other tributaries upstream from the dam to the Hood and White Salmon Rivers; (3) spring-run Chinook salmon originating from the Round Butte Hatchery (Deschutes River, Oregon) and spawning in the Hood River; (4) spring-run Chinook salmon originating from the Carson National Fish hatchery and spawning in the Wind River; and (5) naturally spawning Chinook salmon originating from the Rogue River Fall Chinook Program. This DPS does include Chinook salmon from 20 artificial propagation programs: The Sea Resources Tule Chinook Program; Big Creek Tule Chinook Program; Astoria High School Salmon-Trout Enhancement Program (STEP) Tule Chinook Program; Warrenton High School STEP Tule Chinook Program; Cowlitz Tule Chinook Program; North Fork Toutle Tule Chinook Program; Kalama Tule Chinook Program; Washougal River Tule Chinook Program; Spring Creek National Fish Hatchery (NFH) Tule Chinook Program; Cowlitz Spring Chinook Program in the Upper Cowlitz River and the Cispus River; Friends of the Cowlitz Spring Chinook Program; Kalama River Spring Chinook Program; Lewis River Spring Chinook Program; Fish First Spring Chinook Program; Sandy River Hatchery (Oregon Department of Fish and Wildlife Stock #11); Deep River Net Pens Tule Fall Chinook Program; Klaskanine Hatchery Tule Fall Chinook Program; Bonneville Hatchery Tule Fall Chinook Program; and the Little White Salmon NFH Tule Fall Chinook Program.	70 FR 37160, Jun 28, 2005	226.212	223.203

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Salmon, Chinook (Puget Sound ESU).	*Oncorhynchus tshawytscha* ...	Naturally spawned Chinook salmon originating from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, Chinook salmon from 27 artificial propagation programs: The Kendall Creek Hatchery Program; Marblemount Hatchery Program (spring yearlings, spring subyearlings, and summer-run); Harvey Creek Hatchery Program (summer-run and fall-run); Whitehorse Springs Pond Program; Wallace River Hatchery Program (yearlings and subyearlings); Tulalip Bay Program; Issaquah Hatchery Program; Soos Creek Hatchery Program; Icy Creek Hatchery Program; Keta Creek Hatchery Program; White River Hatchery Program; White Acclimation Pond Program; Hupp Springs Hatchery Program; Voights Creek Hatchery Program; Diru Creek Program; Clear Creek Program; Kalama Creek Program; George Adams Hatchery Program; Rick's Pond Hatchery Program; Hamma Hamma Hatchery Program; Dungeness/Hurd Creek Hatchery Program; Elwha Channel Hatchery Program; and the Skookum Creek Hatchery Spring-run Program.	70 FR 37160, Jun 28, 2005 ...	226.212	223.203
Salmon, Chinook (Snake River fall-run ESU).	*Oncorhynchus tshawytscha* ...	Naturally spawned fall-run Chinook salmon originating from the mainstem Snake River below Hells Canyon Dam and from the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins. Also, fall-run Chinook salmon from four artificial propagation programs: The Lyons Ferry Hatchery Program; Fall Chinook Acclimation Ponds Program; Nez Perce Tribal Hatchery Program; and the Oxbow Hatchery Program.	70 FR 37160, Jun 28, 2005 ...	226.205	223.203
Salmon, Chinook (Snake River spring/summer-run ESU).	*Oncorhynchus tshawytscha* ...	Naturally spawned spring/summer-run Chinook salmon originating from the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins. Also, spring/summer-run Chinook salmon from 11 artificial propagation programs: The Tucannon River Program; Lostine River Program; Catherine Creek Program; Lookingglass Hatchery Program; Upper Grande Ronde Program; Imnaha River Program; Big Sheep Creek Program; McCall Hatchery Program; Johnson Creek Artificial Propagation Enhancement Program; Pahsimeroi Hatchery Program; and the Sawtooth Hatchery Program.	70 FR 37160, Jun 28, 2005 ...	226.205	223.203
Salmon, Chinook (Upper Willamette River ESU).	*Oncorhynchus tshawytscha* ...	Naturally spawned spring-run Chinook salmon originating from the Clackamas River and from the Willamette River and its tributaries above Willamette Falls. Also, spring-run Chinook salmon from six artificial propagation programs: The McKenzie River Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #23); Marion Forks Hatchery/North Fork Santiam River Program (ODFW Stock #21); South Santiam Hatchery Program (ODFW Stock #24) in the South Fork Santiam River and Mollala River; Willamette Hatchery Program (ODFW Stock #22); and the Clackamas Hatchery Program (ODFW Stock #19).	70 FR 37160, Jun 28, 2005 ...	226.212	223.203
Salmon, chum (Columbia River ESU).	*Oncorhynchus keta*	Naturally spawned chum salmon originating from the Columbia River and its tributaries in Washington and Oregon. Also, chum salmon from three artificial propagation programs: The Chinook River Program (Sea Resources Hatchery); Grays River Program; and the Washougal River Hatchery/Duncan Creek Hatchery Program.	70 FR 37160, Jun 28, 2005 ...	226.212	223.203
Salmon, chum (Hood Canal summer-run ESU).	*Oncorhynchus keta*	Naturally spawned summer-run chum salmon originating from Hood Canal and its tributaries as well as from Olympic Peninsula rivers between Hood Canal and Dungeness Bay (inclusive). Also, summer-run chum salmon from four artificial propagation programs: The Hamma Hamma Fish Hatchery Program; Lilliwaup Creek Fish Hatchery Program; Tahuya River Program; and the Jimmycomelately Creek Fish Hatchery Program.	70 FR 37160, Jun 28, 2005 ...	226.212	223.203
Salmon, coho (Lower Columbia River ESU).	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from the Columbia River and its tributaries downstream from the Big White Salmon and Hood Rivers (inclusive) and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Also, coho salmon from 23 artificial propagation programs: The Grays River Program; Sea Resources Hatchery Program; Peterson Coho Project; Big Creek Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #13); Astoria High School Salmon-Trout Enhancement Program (STEP) Coho Program; Warrenton High School STEP Coho Program; Cathlamet High School Future Farmers of America Type-N Coho Program; Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers; Cowlitz Game and Anglers Coho Program; Friends of the Cowlitz Coho Program; North Fork Toutle River Hatchery Program; Kalama River Type-N Coho Program; Kalama River Type-S Coho Program; Lewis River Type-N Coho Program; Lewis River Type-S Coho Program; Fish First Wild Coho Program; Fish First Type-N Coho Program; Syverson Project Type-N Coho Program; Washougal River Type-N Coho Program; Eagle Creek National Fish Hatchery Program; Sandy Hatchery Program (ODFW Stock #11); and the Bonneville/Cascade/Oxbow Complex (ODFW Stock #14) Hatchery Program.	70 FR 37160, Jun 28, 2005 ...	NA	223.203
Salmon, coho (Oregon Coast ESU).	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from coastal rivers south of the Columbia River and north of Cape Blanco. Also, coho salmon from one artificial propagation program: The Cow Creek Hatchery Program (Oregon Department of Fish and Wildlife Stock #18).	76 FR 35755, Jun 20, 2011 ...	226.212	223.203
Salmon, coho (Southern Oregon/Northern California Coast ESU).	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from coastal streams and rivers between Cape Blanco, Oregon and Punta Gorda, California. Also, coho salmon from three artificial propagation programs: The Cole Rivers Hatchery Program (ODFW Stock # 52); Trinity River Hatchery Program; and the Iron Gate Hatchery Program.	70 FR 37160, Jun 28, 2005 ...	226.210	223.203
Salmon, sockeye (Ozette Lake ESU).	*Oncorhynchus nerka*	Naturally spawned sockeye salmon originating from the Ozette River and Ozette Lake and its tributaries. Also, sockeye salmon from two artificial propagation programs: The Umbrella Creek Hatchery Program; and the Big River Hatchery Program.	70 FR 37160, Jun 28, 2005 ...	226.212	223.203

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Steelhead (California Central Valley DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Sacramento and San Joaquin Rivers and their tributaries; excludes such fish originating from San Francisco and San Pablo Bays and their tributaries. This DPS does include steelhead from two artificial propagation programs: The Coleman National Fish Hatchery Program, and the Feather River Fish Hatchery Program.	71 FR 834, Jan 5, 2006	226.211	223.203
Steelhead (Central California Coast DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Russian River to and including Aptos Creek, and all drainages of San Francisco and San Pablo Bays eastward to Chipps Island at the confluence of the Sacramento and San Joaquin rivers. Also, steelhead from two artificial propagation programs: The Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project).	71 FR 834, Jan 5, 2006	226.211	223.203
Steelhead (Lower Columbia River DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from rivers between the Cowlitz and Wind Rivers (inclusive) and the Willamette and Hood Rivers (inclusive); excludes such fish originating from the upper Willamette River basin above Willamette Falls. This DPS does include steelhead from seven artificial propagation programs: The Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program (Oregon Department of Fish and Wildlife (ODFW) Stock #122); Sandy Hatchery Late Winter-run Program (ODFW Stock #11); Hood River Winter-run Program (ODFW Stock #50); and the Lewis River Wild Late-run Winter Steelhead Program.	71 FR 834, Jan 5, 2006	226.212	223.203
Steelhead (Middle Columbia River DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Wind and Hood Rivers (exclusive) to and including the Yakima River; excludes such fish originating from the Snake River basin. This DPS does include steelhead from seven artificial propagation programs: The Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program (Oregon Department of Fish and Wildlife (ODFW) Stock #91); and the Deschutes River Program (ODFW Stock #66). This DPS does not include steelhead that are designated as part of an experimental population.	71 FR 834, Jan 5, 2006	226.212	223.203
Steelhead (Middle Columbia River DPS–XN).	Oncorhynchus mykiss	Middle Columbia River steelhead only when, and at such times as, they are found above Round Butte Dam.	78 FR 2893, Jan. 15, 2013	N/A	223.301
Steelhead (Northern California DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers in California coastal river basins from Redwood Creek to and including the Gualala River.	71 FR 834, Jan 5, 2006	226.211	223.203
Steelhead (Puget Sound DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, steelhead from six artificial propagation programs: The Green River Natural Program; White River Winter Steelhead Supplementation Program; Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers; and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program.	72 FR 26722, May 11, 2007	NA	223.203
Steelhead (Snake River Basin DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Snake River basin. Also, steelhead from six artificial propagation programs: The Tucannon River Program; Dworshak National Fish Hatchery Program; Lolo Creek Program; North Fork Clearwater Program; East Fork Salmon River Program; and the Little Sheep Creek/Imnaha River Hatchery Program (Oregon Department of Fish and Wildlife Stock #29).	71 FR 834, Jan 5, 2006	226.212	223.203
Steelhead (South-Central California Coast DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Pajaro River to (but not including) the Santa Maria River.	71 FR 834, Jan 5, 2006	226.211	223.203
Steelhead (Upper Columbia River DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Yakima River to the U.S.-Canada border. Also, steelhead from six artificial propagation programs: The Wenatchee River Program; Wells Hatchery Program (in the Methow and Okanogan Rivers); Winthrop National Fish Hatchery Program; Omak Creek Program; and the Ringold Hatchery Program.	71 FR 834, Jan 5, 2006	226.212	223.203
Steelhead (Upper Willamette River DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous winter-run *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Willamette River and its tributaries upstream of Willamette Falls to and including the Calapooia River.	71 FR 834, Jan 5, 2006	226.212	223.203
Sturgeon, Atlantic (Gulf of Maine DPS).	*Acipenser oxyrinchus oxyrinchus.*	Anadromous Atlantic sturgeon originating from watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA.	77 FR 5880, Feb 6, 2012	NA	NA
Sturgeon, Gulf	*Acipenser oxyrinchus desotoi*	Entire subspecies	56 FR 49653, Sep 30, 1991	226.214	17.44(v)
Sturgeon, North American green (Southern DPS).	*Acipenser medirostris*	Green sturgeon originating from coastal rivers south of the Eel River (exclusive) and the Sacramento River basin.	71 FR 17757, April 7, 2006; 71 FR 19241, April 13, 2006.	226.219	223.210
Marine Invertebrates:					
Coral, elkhorn	*Acropora palmata*	Entire species	71 FR 26852, May 9, 2006	226.216	223.208
Coral, staghorn	*Acropora cervicornis*	Entire species	71 FR 26852, May 9, 2006	226.216	223.208
Marine Plants:					

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Seagrass, Johnson's	*Halophila johnsonii*	Entire species	63 FR 49035, Sep 14, 1998 ..	226.213	NA

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[71 FR 26861, May 9, 2006, as amended at 71 FR 31965, June 2, 2006; 71 FR 38270, July 6, 2006; 72 FR 26734, May 11, 2007; 73 FR 7843, Feb. 11, 2008; 73 FR 72236, Nov. 26, 2008; 74 FR 42606, Aug. 24, 2009; 75 FR 13024, Mar. 18, 2010; 75 FR 22289, Apr. 28, 2010; 75 FR 65248, Oct. 22, 2010; 76 FR 35771, June 20, 2011; 76 FR 58951, Sept. 22, 2011; 77 FR 5911, Feb. 6, 2012].

■ 4. In § 223.201, paragraph (b)(1) is revised to read as follows:

§ 223.201 Guadalupe fur seal.

* * * * *

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section subject to the provisions of part 222 subpart C—General Permit Procedures.

* * * * *

■ 5. In § 223.203,

■ (a) Revise paragraph (a) and the introductory text of paragraph (b);

■ (b) Revise paragraph (b)(1) and the introductory text of paragraphs (b)(2), (b)(3), and (b)(4);

■ (c) Remove and reserve paragraph (b)(4)(v);

■ (d) Revise the introductory text of paragraphs (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13); and,

■ (e) Revise the first sentence of paragraph (c) to read as follows:

§ 223.203 Anadromous fish.

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102.

(b) Limits on the prohibitions. The limits to the prohibitions of paragraph (a) of this section relating to threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 are described in the following paragraphs (b)(1) through (b)(13):

(1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102.

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102 do not apply to:

* * * * *

(3) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

* * * * *

(4) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to fishery harvest activities provided that:

* * * * *

(v) [Reserved]

(5) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to activity associated with artificial propagation programs provided that:

* * * * *

(6) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of *United States* v. *Washington* or *United States* v. *Oregon,* the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

* * * * *

(7) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to scientific research activities provided that:

* * * * *

(8) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

* * * * *

(9) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to the physical diversion of water from a stream or lake, provided that:

* * * * *

(10) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to routine road maintenance activities provided that:

* * * * *

(11) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

* * * * *

(12) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

* * * * *

(13) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to non-Federal forest management activities

conducted in the State of Washington provided that:

* * * * *

(c) *Affirmative Defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102, any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.204(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation.

* * *

* * * * *

■ 6. In § 223.208, paragraph (a)(1) is revised to read as follows:

§ 223.208 Corals.

(a) * * *

(1) The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to elkhorn *(Acropora palmata*) and staghorn (*A. cervicornis*) corals listed as threatened in § 223.102, except as provided in § 223.208(c).

* * * * *

■ 7. In § 223.210,

■ (a) Revise paragraphs (a) and (b), (b)(1) introductory text, paragraph (b)(2), (b)(3) introductory text, and (b)(4) introductory text;

■ (b) Revise paragraph (c), (c)(1) introductory text, and paragraphs (c)(2) and (c)(3); and,

■ (c) Revise paragraphs (d) and (e) to read as follows:

§ 223.210 North American green sturgeon.

(a) *Prohibitions.* The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened Southern Distinct Population Segment (DPS) of North American green sturgeon listed in § 223.102.

(b) *Exceptions.* Exceptions to the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in section 223.102 are described in the following paragraphs (b)(1) through (b)(3).

(1) Scientific Research and Monitoring Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if:

* * * * *

(2) Enforcement Exception. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to any employee of NMFS, when the employee, acting in the course of his or her official duties, takes the Southern DPS listed in § 223.102 without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

* * * * *

(3) Emergency Fish Rescue and Salvage Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if:

* * * * *

(4) Habitat Restoration Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to habitat restoration activities including barrier removal or modification to restore water flows, riverine or estuarine bed restoration, natural bank stabilization, restoration of native vegetation, removal of non-native species, or removal of contaminated sediments, that reestablish self-sustaining habitats for the Southern DPS, if:

* * * * *

(c) *Exemptions via ESA 4(d) Program Approval.* Exemptions from the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in § 223.102 are described in paragraphs (c)(1) through (c)(3) of this section.

(1) Scientific Research and Monitoring Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to ongoing or future state-sponsored scientific research or monitoring activities that are part of a NMFS-approved, ESA-compliant state 4(d) research program conducted by, or in coordination with, state fishery management agencies (California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game), or as part of a monitoring and research program overseen by, or coordinated by, one of these agencies. State 4(d) research programs must meet the following criteria:

* * * * *

(2) Fisheries Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to fisheries activities that are conducted in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP). If NMFS finds that an FMEP meets the criteria listed below, a letter of concurrence which sets forth the terms of the FMEP's implementation and the duties of the parties pursuant to the FMEP, will be issued to the applicant.

* * * * *

(3) Tribal Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to fishery harvest or other activities undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in Willapa Bay, WA, Grays Harbor, WA, Coos Bay, OR, Winchester Bay, OR, Humboldt Bay, CA, and any other area where tribal treaty fishing occurs, if those activities are compliant with a tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Southern DPS. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.

* * * * *

(d) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the ESA relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened Southern DPS of North American green sturgeon listed in § 223.102. Federal, state, and private-sponsored research activities for scientific research or enhancement purposes that are not covered under Scientific Research and Monitoring Exceptions as described in paragraph (b)(1) of this section or Scientific Research and Monitoring Exemptions as described in paragraph (c)(1) of this section, may take Southern DPS fish pursuant to the specifications of an ESA section 10 permit. Section 9(a)(1)(B) and (a)(1)(C) take prohibitions would not apply to ongoing research activities if an application for an ESA section

10(a)(1)(A) permit is received by NMFS, preferably through the NMFS online application Web site *https://apps.nmfs.noaa.gov,* no later than November 29, 2010. The take prohibitions would take effect if the permit application is rejected as insufficient or a permit is denied. If the permit application is received by November 29, 2010, ongoing research activities may continue without take prohibitions until NMFS issues or denies a permit.

(e) *Affirmative Defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened Southern DPS of North American green sturgeon listed in § 223.102, any person claiming that his or her take is authorized via methods listed in paragraph (b) of this section shall have a defense where the person can demonstrate that the take authorization is applicable and was in force, and that the person fully complied with the take authorization requirements at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

* * * * *

■ 8. Add § 223.211 to read as follows:

§ 223.211 Southern DPS of spotted seal.

The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species shall apply to the Southern Distinct Population Segment of the spotted seal listed in § 223.102.

* * * * *

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 9. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 10. Revise § 224.101 to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species

(a) The regulations in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be endangered species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations in this part apply only to the endangered species enumerated in this section.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing endangered species.

(d) The table below identifies the species under the jurisdiction of the Secretary of Commerce that have been determined to be endangered pursuant to section 4(a) of the Act, as well as species treated as endangered because they are sufficiently similar in appearance to endangered species, and experimental populations of endangered species.

(e) The columns entitled ''Common name,'' ''Scientific name,'' and ''Description of listed entity'' define the species within the meaning of the Act. In the ''Common name'' column, experimental populations are identified as ''XE'' for essential populations or ''XN'' for nonessential populations. Species listed based on similarity of appearance are identified as ''S/A.'' Although a column for ''Common name'' is included, common names cannot be relied upon for identification of any specimen, because they may vary greatly in local usage. The ''Scientific name'' column provides the most recently accepted scientific name, relying to the extent practicable on the *International Code of Zoological Nomenclature.* In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The ''Description of listed entity'' column identifies whether the listed entity comprises the entire species, a subspecies, or a distinct population segment (DPS) and provides a description for any DPSs. Unless otherwise indicated in the ''Description of listed entity'' column, all individual members of the listed entity and their progeny retain their listing status wherever found, including individuals in captivity. Information regarding the general range of the species, subspecies, or DPS may be found in the **Federal Register** notice cited in the ''Citation(s) for listing determination(s)'' column.

(f) The ''Citation(s) for listing determination(s)'' column provides reference to the **Federal Register** Notice(s) determining the species' status under the Act. The abbreviation ''(SPR)'' (significant portion of its range) after a citation indicates that the species was listed based on its status in a significant portion of its range. If a citation does not include the ''(SPR)'' notation, it means that the species was listed based on its status throughout its entire range. For ''(SPR)'' listings, a geographical description of the SPR may be found in the referenced **Federal Register** Notice. The ''(SPR)'' notation serves an informational purpose only and does not imply any limitation on the application of the prohibitions or restrictions of the Act or implementing rules.

(g) The ''Critical habitat'' and ''ESA rules'' columns provide cross-references to other sections in this part and part 226. The term ''NA'' appearing in either of these columns indicates that there are no critical habitat designations or ESA rules for that species. However, all other applicable rules in parts 222 through 226 and part 402 still apply to that species. Also, there may be other rules in this title that relate to such wildlife. The ''ESA rules'' column is not intended to list all Federal, state, tribal, or local governmental regulations that may apply to the species.

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals:					
Dolphin, Chinese River (aka baiji).	*Lipotes vexillifer*	Entire species	54 FR 22906, May 30, 1989	NA	NA
Dolphin, Indus River	*Platanista gangetica minor*	Entire subspecies	55 FR 50835, Dec 11, 1990	NA	NA
Porpoise, Gulf of California harbor (aka vaquita or cochito).	*Phocoena sinus*	Entire species	50 FR 1056, Jan 9, 1985	NA	NA
Sea lion, Steller (Western DPS).	*Eumetopias jubatus*	Steller sea lions born in the wild, west of 144° W. Long. Also, Steller sea lions born in captivity whose mother was born in the wild, west of 144° W. Long., and progeny of these captives.	62 FR 24345, May 5, 1997	226.202	224.103, 226.202
Seal, Hawaiian monk	*Monachus schauinslandi*	Entire species	41 FR 51611, Nov 23, 1976	226.201	NA
Seal, Ladoga ringed	*Phoca (=Pusa) hispida ladogensis*	Entire subspecies	77 FR 76706; Dec 28, 2012	NA	NA

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Seal, Mediterranean monk	*Monachus monachus*	Entire species	35 FR 8491, Jun 2, 1970	NA	NA
Seal, Saimaa ringed	*Phoca (=Pusa) hispida saimensis*	Entire subspecies	58 FR 26920, May 6, 1993	NA	NA
Whale, beluga (Cook Inlet) DPS).	*Delphinapterus leucas*	Beluga whales originating from Cook Inlet, Alaska	73 FR 62919, Oct 22, 2008	226.220	NA
Whale, blue	*Balaenoptera musculus*	Entire species	35 FR 18319, Dec 2, 1970	NA	NA
Whale, bowhead	*Balaena mysticetus*	Entire species	35 FR 18319, Dec 2, 1970	NA	NA
Whale, false killer (Main Hawaiian Islands Insular DPS).	Pseudorca crassidens	False killer whales found from nearshore of the main Hawaiian Islands out to 140 km (approximately 75 nautical miles) and permanently reside within this geographic range.	77 FR 70915, November 28, 2012	NA	NA
Whale, fin or finback	*Balaenoptera physalus*	Entire species	35 FR 8491, Jun 2, 1970	NA	NA
Whale, gray (Western North Pacific DPS).	*Eschrichtius robustus*	Western North Pacific (Korean) gray whales	35 FR 8491, Jun 2, 1970; 59 FR 31094, Jun 16, 1994.	NA	NA
Whale, humpback	*Megaptera novaeangliae*	Entire species	35 FR 18319, Dec 2, 1970	NA	224.103
Whale, killer (Southern Resident DPS).	*Orcinus orca*	Killer whales from the J, K, and L pods, except such whales placed in captivity prior to November 2005 and their captive born progeny.	70 FR 69903, Nov 18, 2005	226.206	224.103
Whale, North Atlantic right	*Eubalaena glacialis*	Entire species	73 FR 12024, Mar 6, 2008	226.203	224.103, 224.105
Whale, North Pacific right	*Eubalaena japonica*	Entire species	73 FR 12024, Mar 6, 2008	226.215	224.103
Whale, sei	*Balaenoptera borealis*	Entire species	35 FR 18319, Dec 2, 1970	NA	NA
Whale, Southern right	*Eubalaena australis*	Entire species	35 FR 18319, Dec 2, 1970	NA	NA
Whale, sperm	*Physeter macrocephalus* (=*catodon*).	Entire species	35 FR 18319, Dec 2, 1970	NA	NA
Sea Turtles: [2]					
Sea turtle, green	*Chelonia mydas*	Breeding colony populations in Florida and on the Pacific coast of Mexico.	43 FR 32800, Jul 28, 1978	226.208	224.104
Sea turtle, hawksbill	*Eretmochelys imbricata*	Entire species	35 FR 8491, Jun 2, 1970	226.209	224.104
Sea turtle, Kemp's ridley	*Lepidochelys kempii*	Entire species	35 FR 18319, Dec 2, 1970	NA	224.104
Sea turtle, leatherback	*Dermochelys coriacea*	Entire species	35 FR 8491, Jun 2, 1970	226.207	224.104
Sea turtle, loggerhead (Mediterranean Sea DPS).	*Caretta caretta*	Loggerhead sea turtles originating from the Mediterranean Sea.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (North Indian Ocean DPS).	*Caretta caretta*	Loggerhead sea turtles originating from the North Indian Ocean.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (North Pacific Ocean DPS).	*Caretta caretta*	Loggerhead sea turtles originating from the North Pacific Ocean.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (Northeast Atlantic Ocean DPS).	*Caretta caretta*	Loggerhead sea turtles originating from the Northeast Atlantic Ocean east of 40° W. Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36′ W. Long.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (South Pacific Ocean DPS).	*Caretta caretta*	Loggerhead sea turtles originating from the South Pacific Ocean west of 67° W. Long., and east of 141° E. Long.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, olive ridley	*Lepidochelys olivacea*	Breeding colony populations on the Pacific coast of Mexico.	43 FR 32800, Jul 28, 1978	NA	224.104
Fishes:					
Bocaccio (Puget Sound/Georgia Basin DPS).	*Sebastes paucispinis*	Bocaccio originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010	NA	NA
Salmon, Atlantic (Gulf of Maine DPS).	*Salmo salar*	Naturally spawned Atlantic salmon originating from the Gulf of Maine, including such Atlantic salmon originating from watersheds from the Androscoggin River northward along the Maine coast to the Dennys River. Also, Atlantic salmon from two artificial propagation programs: Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH). This DPS does not include landlocked salmon and those salmon raised in commercial hatcheries for aquaculture.	74 FR 29344, Jun 19, 2009	226.217	NA
Salmon, Chinook (Sacramento River winter-run ESU).	*Oncorhynchus tshawytscha*	Naturally spawned winter-run Chinook salmon originating from the Sacramento River and its tributaries. Also, winter-run Chinook salmon from one artificial propagation program: The Livingston Stone National Fish Hatchery.	70 FR 37160, Jun 28, 2005	226.204	NA
Salmon, Chinook (Upper Columbia River spring-run ESU).	*Oncorhynchus tshawytscha*	Naturally spawned spring-run Chinook salmon originating from Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam (excluding the Okanogan River subbasin). Also, spring-run Chinook salmon from six artificial propagation programs: The Twisp River Program; Chewuch River Program; Methow Program; Winthrop National Fish Hatchery Program; Chiwawa River Program; and the White River Program.	70 FR 37160, Jun 28, 2005	226.212	NA
Salmon, coho (Central California Coast ESU).	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from rivers south of Punta Gorda, California to and including Aptos Creek, as well as such coho salmon originating from tributaries to San Francisco Bay. Also, coho salmon from three artificial propagation programs: The Don Clausen Fish Hatchery Captive Broodstock Program, the Scott Creek/King Fisher Flats Conservation Program, and the Scott Creek Captive Broodstock Program.	70 FR 37160, Jun 28, 2005; 77 FR 19552, Apr 2, 2012	226.210	NA
Salmon, sockeye (Snake River ESU).	*Oncorhynchus nerka*	Naturally spawned anadromous and residual sockeye salmon originating from the Snake River basin. Also, sockeye salmon from one artificial propagation program: The Redfish Lake Captive Broodstock Program.	70 FR 37160, Jun 28, 2005	226.205	NA
Sawfish, largetooth	*Pristis perotteti*	Entire species	76 FR 40835, Jul 12, 2011	NA	NA
Sawfish, smalltooth (United States DPS).	*Pristis pectinata*	Smalltooth sawfish originating from U.S. waters	68 FR 15674, Apr 1, 2003	226.218	NA

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Steelhead (Southern California DPS).	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and man-made impassable barriers from the Santa Maria River to the U.S.-Mexico Border.	71 FR 834, Jan 5, 2006	226.211	NA
Sturgeon, Atlantic (Carolina DPS).	*Acipenser oxyrinchus oxyrinchus*	Atlantic sturgeon originating from watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor.	77 FR 5914, Feb 6, 2012	NA	NA
Sturgeon, Atlantic (Chesapeake Bay DPS).	*Acipenser oxyrinchus oxyrinchus*	Anadromous Atlantic sturgeon originating from watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, Virginia.	77 FR 5880, Feb 6, 2012	NA	NA
Sturgeon, Atlantic (New York Bight DPS).	*Acipenser oxyrinchus oxyrinchus*	Anadromous Atlantic sturgeon originating from watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA to the Delaware-Maryland border on Fenwick Island.	77 FR 5880, Feb 6, 2012	NA	NA
Sturgeon, Atlantic (South Atlantic DPS).	*Acipenser oxyrinchus oxyrinchus*	Atlantic sturgeon originating from watersheds (including all rivers and tributaries) of the ACE (Ashepoo, Combahee, and Edisto) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida.	77 FR 5914, Feb 6, 2012	NA	NA
Sturgeon, shortnose	*Acipenser brevirostrum*	Entire species	32 FR 4001, Mar 11, 1967	NA	NA
Totoaba	*Cynoscion macdonaldi*	Entire species	44 FR 29480, May 21, 1979	NA	NA
Marine Invertebrates:					
Abalone, black	*Haliotis cracherodii*	Entire species	74 FR 1937, Jan 14, 2009	226.221	NA
Abalone, white	*Haliotis sorenseni*	Entire species	66 FR 29054, May, 29, 2001.	NA	NA

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[64 FR 14066, Mar. 23, 1999, as amended 64 FR 14328, Mar. 24, 1999; 65 FR 20918, Apr. 19, 2000; 65 FR 69481, Nov. 17, 2000; 66 FR 29055, May 29, 2001; 67 FR 21598, May 1, 2002; 68 FR 15680, Apr. 1, 2003; 70 FR 37203, June 28, 2005; 70 FR 69912, Nov. 18, 2005; 71 FR 861, Jan. 5, 2006; 73 FR 12030, Mar. 6, 2008; 73 FR 63907, Oct. 28, 2008; 73 FR 62930, Oct. 22, 2008; 74 FR 1946, Jan. 14, 2009; 74 FR 29386, June 19, 2009; 75 FR 22290, Apr. 28, 2010; 76 FR 14300, Mar. 16, 2011; 76 FR 40835, July 12, 2011]

[FR Doc. 2013–15015 Filed 6–25–13; 8:45 am]

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Notices

Federal Register

Vol. 78, No. 123

Wednesday, June 26, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Registration Requirements.

OMB Control Number: 0583–0128.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S. C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry are safe, wholesome, unadulterated, and properly labeled and packaged. According to the regulations, (9 CFR 320.5 and 381.179), parties required to register with FSIS must do so by submitting form FSIS Form 5020–1, ''Registration of Meat and Poultry Handlers.''

Need and Use of the Information: FSIS will collect the name, address of all locations at which they conduct the business that requires them to register and all trade or business names under which they conduct these businesses. FSIS uses this information to maintain a database of these businesses. If the information were not collected, it would reduce the effectiveness of the meat and poultry inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 600.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 150.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–15209 Filed 6–25–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 26, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Farm and Ranch Irrigation Survey.

OMB Control Number: 0535–0234.

Summary of Collection: The Farm and Ranch Irrigation Survey (FRIS) is a follow-on survey and in integral part of the 2012 Census of Agriculture which is conducted every five years under the authority of the Census of Agriculture Act of 1997 (Pub. L. 105–113). This law requires the Secretary of Agriculture to conduct a census of agriculture beginning in 2002 and every fifth year thereafter (prior to that the census was conducted by the Department of Commerce). The 2013 FRIS will be obtaining data describing the irrigation

activities of U.S. farm operations. Some of these activities are of national concern, such as the use of chemigation, fertigation and water-conserving practices of irrigators. The 2013 FRIS will also include a horticultural operations in a combined questionnaire that will be directed at horticultural producers.

Need and Use of the Information: NASS will collect information from the FRIS on acres irrigated by land use category, acres and yields of irrigated and non-irrigated crops, quantity of water applied and method of application to selected crops, acres irrigated and quantity of water used by source, acres irrigated by type of water distribution systems, and number of irrigation wells and pumps. The primary purpose of FRIS is to provide detailed data on water management practices and water uses in American agriculture, and to on-farm irrigation activities for use in preparing a wide variety of water-related local programs, economic models, legislative initiatives, market analyses, and feasibility studies. The absence of FRIS data would certainly affect irrigation policy decision.

Description of Respondents: Farms.

Number of Respondents: 35,000.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 29,433.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–15205 Filed 6–25–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Change to the CCC Sugar Purchase and Exchange To Include Certificates of Quota Eligibility Issued Pursuant to the United States-Colombia Trade Promotion Agreement and United States-Panama Trade Promotion Agreement

AGENCY: Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) announces the intent to include Certificates of Quota Eligibility (CQEs) issued under the United States-Colombia Trade Promotion Agreement (U.S.-Colombia TPA) and the United States-Panama Trade Promotion Agreement (U.S.-Panama TPA) in the sugar purchase and exchange announced on June 18, 2013.

DATES: *Effective date:* June 26, 2013.

FOR FURTHER INFORMATION CONTACT: For current market conditions, eligibility, and criteria for evaluation information contact Ron Lord; telephone (202) 720–6939. For general exchange information contact Pamela McKenzie; telephone (202) 260–8906. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: USDA's Sugar Program and the Domestic Sugar Market Conditions

Under the Sugar Program, domestic sugar beet or sugarcane processors may borrow from CCC, pledging their sugar as collateral, and then satisfy their loans either by repaying the loan on or before loan maturity or by transferring the collateral to CCC immediately following loan maturity, also known as ''forfeiture'' of collateral (as specified in 7 CFR 1435.105). The Farm Service Agency (FSA) administers the Sugar Program for CCC. Under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, as amended (Pub. L. 104–127; 7 U.S.C. 7272), the U.S. Department of Agriculture (USDA) is required to operate the Sugar Program, to the maximum extent practicable, at no cost to the Federal government by avoiding forfeitures of sugar loan collateral to CCC.

The sugarcane and sugar beet crops supplying the U.S. market are setting production records for fiscal year (FY) 2013. The FY 2013 ending stocks-to-use ratio for sugar was projected at 19 percent in the June 2013 USDA World Agricultural Supply and Demand Estimates (WASDE) report, well above its historic average, and the FY 2014 ending stocks-to-use ratio for sugar was projected at over 22 percent. In the past, an ending stocks-to-use ratio at or above 18 percent has been strongly correlated with low U.S. sugar prices, and with forfeiture of sugar loan collateral to CCC. Record FY 2013 sugar production has caused domestic sugar prices to fall below the support level established by USDA's Sugar Program.

A valid TPA CQE is required for the import of sugar into the United States under the sugar tariff-rate quotas established under the U.S.-Colombia TPA and U.S.-Panama TPA, and thus each U.S.-Colombia TPA or U.S.-Panama TPA CQE represents a given quantity of import access.

CCC Sugar Purchase and Exchanges

To reduce the cost of the Sugar Program to the Federal government, prior to the maturity of loans to sugar processors, CCC announced on June 18, 2013, its intent to purchase sugar from the U.S. domestic market and conduct voluntary exchanges of the purchased sugar in return for credits under the Refined Sugar Re-Export Program (78 FR 36508–36510). This notice announces CCC's intent to also purchase sugar from the domestic market in order to conduct voluntary exchanges for privately held TPA CQEs issued under the U.S.-Colombia TPA and U.S.-Panama TPA. Therefore CCC has amended Invitation No. 1 to Announcement KCPBS2, Purchase of Bulk Sugar, to include the purchase of sugar to exchange for privately held CQEs issued under the U.S.-Colombia TPA and U.S.-Panama TPA, in addition to credits under the Refined Sugar Re-Export Program. The amended Invitation is available on the FSA Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing*.

These exchanges are expected to remove domestic sugar from the market at a lower cost to the Federal government than the cost of acquiring domestic sugar through loan collateral forfeiture.

The exchange announcement specifies a minimum bid ratio of U.S.-Colombia TPA CQEs and U.S.-Panama TPA CQEs per MT of CCC sugar, and will be made available at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.*

Eligibility

To be eligible for the exchange, private sector exporters or traders must provide a valid original calendar year 2013 United States-Colombia TPA CQE or United States-Panama TPA CQE to CCC.

Criteria for Evaluation of Tenders (Offers and Exchange Bids)

CCC will combine the sugar offers and exchange bids that achieve the greatest cost reduction relative to the costs of later acquiring the domestic sugar through forfeiture. The specific formula that CCC will use to evaluate and accept offer and bid combinations is specified in the purchase and exchange invitations.

Signed on June 20, 2013.

Juan M. Garcia,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013–15285 Filed 6–25–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bitterroot National Forest, Darby Ranger District, Como Forest Health Project

AGENCY: Forest Service.

ACTION: Notice; Correction.

SUMMARY: The Department of Agriculture (USDA), Forest Service, Bitterroot National Forest, Darby Ranger District published a document in the **Federal Register** of June 17, 2013, concerning notice of intent to prepare an environmental impact statement. The document contained incorrect distance of the project area from Darby, Montana.

DATES: Comments concerning the scope of the analysis must be received by July 17, 2013. The draft environmental impact statement is expected December 2013 and the final environmental impact statement is expected July 2014.

ADDRESSES: Send written comments to Chuck Oliver, Darby District Ranger, P.O. Box 388, Darby, MT, 59829. Comments may also be sent via email to *comments-northern-bitterroot-darby@fs.fed.us,* or via facsimile to 406–821–4264.

FOR FURTHER INFORMATION CONTACT: Sara Grove, South Zone Interdisciplinary Team Leader; West Fork Ranger Station; 6735 West Fork Road; Darby, Montana 59829; phone (406) 821–1251; email *sgrove@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Correction

In the **Federal Register** of June 17, 2013, in FR DOC #2013–14229 on page 36163 in the second column, correct the second sentence in **SUMMARY** caption to read:

SUMMARY: * * * The Como FHP covers approximately 5,640 acres of national forest between Lake Como and Lost Horse roads, about 6 miles northwest of Darby in Ravalli County, Montana. * * *

Dated: June 19, 2013.

Julie K. King,

Forest Supervisor, Bitterroot National Forest.

[FR Doc. 2013–15246 Filed 6–25–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Household Water Well System Grant Program Announcement of Application Deadlines and Funding

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces the availability of $917,221 in grant funds to be competitively awarded for the Household Water Well System (HWWS) Grant Program for fiscal year 2013 (FY 2013). RUS will make grants to qualified private non-profit organizations to establish lending programs for homeowners to borrow up to $11,000 to construct or repair household water wells for an existing home. The HWWS Grant Program is authorized under 7 USC 1926e. Regulations may be found at 7 CFR part 1776. Of particular note this year, the RUS, in an effort to address the extreme drought conditions in rural areas, will assign administrative discretion points to applications proposing to serve areas with severe, extreme or exceptional drought, as reported by the U.S. Drought Monitor located at *http://droughtmonitor.unl.edu/.*

DATES: The deadline for completed applications for a HWWS grant is July 26, 2013. Applications in either paper or electronic format must be postmarked or time-stamped electronically on or before the deadline. Late applications will be ineligible for grant consideration.

ADDRESSES: Submit applications to the following addresses:

1. *Electronic applications: http://www.grants.gov* (Grants.gov). Submit electronic applications through Grants.gov, following the instructions on that Web site.

2. *Paper applications:* Water Programs Division, Rural Utilities Service, STOP: 1570, Room 2233–S, 1400 Independence Ave SW., Washington, DC 20250–1570.

Obtain application guides and materials for the HWWS Grant Program electronically or in paper format from the following addresses:

1. *Electronic copies: http://www.rurdev.usda.gov/UWP-individual wellsystems.htm.*

2. *Paper copies:* Write Water Programs Division, Rural Utilities Service, STOP: 1570, Room 2233–S, 1400 Independence Ave SW., Washington, DC 20250–1570 or call (202) 720–9589.

FOR FURTHER INFORMATION CONTACT: Joyce M. Taylor, Community Programs Specialist, Water Programs Division, Water and Environmental Programs. Telephone: (202) 720–9589, fax: (202) 690–0649, email: *JoyceM.Taylor@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service.

Funding Opportunity Title: HWWS Grant Program.

Announcement Type: Grant—Initial.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.862.

Due Date for Applications: July 26, 2013.

Items in SUPPLEMENTARY INFORMATION

I. Funding Opportunity: Description of the HWWS Grant Program.

II. Award Information: Available funds.

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.

VI. Award Administration Information: Award notice information, award recipient reporting requirements.

VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

A. Program Description

The HWWS Grant Program has been established to help individuals with low to moderate incomes finance the costs of household water wells that they own or will own. The HWWS Grant Program is authorized under Section 306E of the Consolidated Farm and Rural Development Act (CONACT), 7 USC 1926e. The CONACT authorizes the RUS to make grants to qualified private non-profit organizations to establish lending programs for household water wells.

As the grant recipients, private non-profit organizations will receive HWWS grants to establish lending programs that will provide water well loans to individuals. The individuals, as loan recipients, may use the loans to construct, refurbish, and service their household well systems. A loan may not exceed $11,000 and will have a term up to 20 years at a one percent annual interest rate.

B. Background

The RUS supports the sound development of rural communities and

the growth of our economy without endangering the environment. The RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to Rural Americans in greatest need.

Central water systems may not be the only or best solution to drinking water problems. Distance or physical barriers make public central water systems costly to deploy in remote areas. A significant number of geographically isolated households without water service might require individual wells rather than connections to new or existing community systems. The goal of the RUS is not only to make funds available to those communities most in need of potable water but also to ensure that facilities used to deliver drinking water are safe and affordable. There is a role for private wells in reaching this goal.

C. Purpose

The purpose of the HWWS Grant Program is to provide funds to private non-profit organizations to assist them in establishing loan programs from which individuals may borrow money for HWWS. Faith-based organizations are eligible and encouraged to apply for this program. Applicants must show that the project will provide technical and financial assistance to eligible individuals to remedy household well problems.

Due to the limited amount of funds available under the HWWS Grant Program, 10 applications may be funded from FY 2013 funds. Applications from existing HWWS grant recipients are acceptable and will be evaluated as new applications.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: Undetermined at this time.

Anticipated Number of Awards: 10.

Length of Project Periods: 12-month project.

Assistance Instrument: Grant Agreement with successful applicants before any grant funds are disbursed.

III. Eligibility Information

A. Who is eligible for grants?

1. An organization is eligible to receive a HWWS grant if it:

a. Has an active registration with current information in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)) and has a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

b. Is a private, non-profit organization.

c. Is legally established and located within one of the following:

(1) A state within the United States,

(2) The District of Columbia,

(3) The Commonwealth of Puerto Rico,

(4) A United States territory.

d. Has the legal capacity and authority to carry out the grant purpose.

e. Has sufficient expertise and experience in lending activities.

f. Has sufficient expertise and experience in promoting the safe and productive use of individually-owned HWWS and ground water.

g. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt.

h. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

i. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any Corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability is not eligible.

2. An individual is ineligible to receive a Household Water Well grant. An individual may receive a loan from an organization receiving a grant award.

B. What are the basic eligibility requirements for a project?

1. Project Eligibility. To be eligible for a grant, the project must:

a. Be a revolving loan fund created to provide loans to eligible individuals to construct, refurbish, and service individually-owned HWWS (see 7 CFR 1776.11 and 1776.12). Loans may not be provided for home sewer or septic system projects.

b. Be established and maintained by a private, non-profit organization.

c. Be located in a rural area. Rural area is defined as locations other than cities or towns of more than 50,000 people and the contiguous and adjacent urbanized area of such towns and cities.

2. Required Matching Contributions. Grant applicants must provide written evidence of a matching contribution of at least 10 percent from sources other than the proceeds of a HWWS grant. In-kind contributions will not be considered for the matching requirement. Please see 7 CFR 1776.9 for the requirement.

3. Other—Requirements

a. DUNS Number. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

b. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)).

(1) Applicants may register for the SAM at *https://www.sam.gov/portal/public/SAM/.*

(2) The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

c. Eligibility to receive a HWWS loan will be based on the following criteria:

(1) An individual must be a member of a household of which the combined household income of all members does not exceed 100 percent of the median non-metropolitan household income for the State or territory in which the individual resides. Household income is the total income from all sources received by each adult household member for the most recent 12-month period for which the information is available. It does not include income earned or received by dependent children under 18 years old or other benefits that are excluded by Federal law. The non-metropolitan household income must be based on the most recent decennial census of the United States.

RUS publishes a list of income exclusions in 7 CFR 3550.54(b). Also, the Department of Housing and Urban Development published a list of income exclusions in the **Federal Register** on April 20, 2001, at 66 FR 20318 (*See* ''Federally Mandated Exclusions'').

(2) The loan recipient must own and occupy the home being improved with the proceeds of the Household Water Well loan or be purchasing the home to occupy under a legally enforceable land

purchase contract which is not in default by either the seller or the purchaser.

(3) The home being improved with the water well system must be located in a rural area.

(4) The loan for a water well system must not be associated with the construction of a new dwelling.

(5) The loan must not be used to substitute a water well system for water service available from collective water systems. (For example, a loan may not be used to restore an old well abandoned when a dwelling was connected to a water district's water line.)

(6) The loan recipient must not be suspended or debarred from participation in Federal programs.

IV. Application and Submission Information

A. Where To Get Application Information

The Household Water Well System Grant Application Guide (Application Guide), copies of necessary forms and samples, and the HWWS Grant Program regulation are available from these sources:

1. Internet for electronic copies: *http://www.grants.gov* or *http://www.rurdev.usda.gov/UWP-individualwellsystems.htm;*

2. Water and Environmental Programs for paper copies: RUS, Water Programs Division, STOP 1570, Room 2233–S, 1400 Independence Ave. SW., Washington, DC 20250–1570, Telephone: (202) 720–9589, Fax: (202) 690–0649.

B. Content and Form of Application Submission

1. Rules and Guidelines

a. Detailed information on each item required can be found in the HWWS Grant Program regulation (7 CFR part 1776) and the Application Guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of HWWS financial assistance specified in the regulation. The regulation and application guide provide specific guidance on each of the items listed.

b. Applications should be prepared in conformance with the provisions in 7 CFR part 1776, subpart B, and applicable regulations including 7 CFR parts 3015 and 3019. Applicants should use the application guide which contains instructions and other important information in preparing their application. Completed applications must include the items found in the checklist in the next paragraph.

2. Checklist of Items in Completed Application Packages

a. DUNS Number. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

b. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry (CCR)).

(1) Applicants may register for the SAM at: *https://www.sam.gov/portal/public/SAM/.*

(2) The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

(3) Your organization must be listed in the SAM. If you have not used Grants.gov before, you will need to register with the SAM and the Credential Provider. New registrations can take 3–5 business days to process. Updating or renewing an active registration has a shorter turnaround, 24 hours. Registrations in SAM are active for one year. The SAM registers your organization, housing your organizational information and allowing Grants.gov to use the information to verify your identity. The DUNS number, Taxpayer Identification Number (TIN), and name and address of the applicant organization must match SAM data files.

c. The electronic and paper application process requires forms with the prefixes RD and SF as well as supporting documents and certifications.

Application Items

1. SF–424, ''Application for Federal Assistance''.

2. SF–424A, ''Budget Information—Non-Construction Programs''.

3. SF–424B, ''Assurances—Non-Construction Programs''.

4. SF–LLL, ''Disclosure of Lobbying Activity''.

5. Form RD 400–1, ''Equal Opportunity Agreement''.

6. Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).

7. Project Proposal, Project Summary, Needs Assessment, Project Goals and Objectives, Project Narrative.

8. Work Plan.

9. Budget and Budget Justification.

10. Evidence of Legal Authority and Existence.

11. Documentation of private non-profit status and Internal Revenue Service (IRS) Tax Exempt Status.

12. List of Directors and Officers.

13. Financial information and sustainability (narrative).

14. Assurances and Certifications of Compliance with Other Federal Statutes.

The forms in items 1 through 6 must be completed and signed where appropriate by an official of your organization who has authority to obligate the organization legally. RD forms are used by programs under the Rural Development mission area. Standard forms (SF) are used Government-wide. In addition to the sources listed in section A, the forms may be accessed electronically through the Rural Development Web site at *http://www.rurdev.usda.gov/FormsAndPublications.html.*

See section V, ''Application Review Information,'' for instructions and guidelines on preparing Items 7 through 13.

3. Compliance with Other Federal Statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

a. 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 7 CFR part 3015—Uniform Federal Assistance Regulations.

c. 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

d. 7 CFR part 3018—New Restrictions on Lobbying.

e. 7 CFR part 3019—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Non-profit Organizations.

f. 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

g. Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance, go to *http://www.LEP.gov.*

h. Federal Obligation Certification on Delinquent Debt.

C. How many copies of an application are required?

1. Applications Submitted on Paper. Submit one signed original and two additional copies. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, and have original signatures. Do not include organizational brochures or promotional materials.

2. Applications Submitted Electronically. Additional paper copies are unnecessary if the application is submitted electronically through *http://www.grants.gov.*

D. How and Where to Submit an Application

1. *Submitting Paper Applications.*

a. For paper applications, mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date to: RUS, Water Programs Division, STOP 1570, Room 2233–S, 1400 Independence Ave. SW., Washington, DC 20250–1570, Telephone: (202) 720–9589.

Submit paper applications marked ''Attention: Water and Environmental Programs.''

b. Applications must show proof of mailing or shipping by one of the following:

(1) A legibly dated U.S. Postal Service (USPS) postmark;

(2) A legible mail receipt with the date of mailing stamped by the USPS; or,

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

c. If a deadline date falls on a weekend, it will be extended to the following Monday. If the date falls on a Federal holiday, it will be extended to the next business day.

d. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents and delay delivery. RUS encourages applicants to consider the impact of this procedure in selecting an application delivery method.

2. Submitting Electronic Applications

a. Applications will not be accepted by fax or electronic mail.

b. Electronic applications for grants will be accepted if submitted through Grants.gov at *http://www.grants.gov.*

c. Applicants must preregister successfully with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without preregistration.

d. Applicants who apply through Grants.gov should submit their electronic applications before the deadline.

e. Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application.

f. Grants.gov has two preregistration requirements: a DUNS number and an active registration in SAM. See the ''Checklist of Items in Completed Application Packages'' for instructions on obtaining a DUNS number and registering in the SAM.

g. You must be registered with Grants.gov before you can submit an electronic grant application.

(1) You must register at *http://www.grants.gov/applicants/get_registered.jsp.*

(2) Organization registration user guides and checklists are available at *http://www.grants.gov/applicants/get_registered.jsp.*

(3) Grants.gov requires some credentialing and online authentication procedures. When an applicant organization is registered with SAM, the organization designates a point of contract who receives a password authorizing the person to designate staff members who are allowed to submit applications electronically through Grants.gov. These authorized organization representatives must be registered with Grants.gov to receive a username and password to submit applications. These procedures may take several business days to complete.

(4) Some or all of the SAM and Grants.gov registration, credentialing and authorizations require updates. If you have previously registered at Grants.gov to submit applications electronically, please ensure that your registration, credentialing and authorizations are up to date well in advance of the grant application deadline.

h. To use Grants.gov:

(1) Follow the instructions on the Web site to find grant information.

(2) Download a copy of an application package.

(3) Complete the package off-line.

(4) Upload and submit the application via the Grants.gov Web site.

(5) If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the Grants.gov Web site.

(6) Again, RUS encourages applicants to take early action to complete the sign-up, credentialing and authorization procedures at *http://www.grants.gov* before submitting an application at the Web site.

E. Deadlines

The deadline for paper and electronic submissions is July 26, 2013. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than the closing date to be considered for FY 2013 grant funding. Electronic applications must have an electronic date and time stamp by midnight of July 26, 2013 to be considered on time. RUS will not accept applications by fax or email. Applications that do not meet the criteria above are considered late applications and will not be considered. RUS will notify each late applicant that its application will not be considered.

F. Funding Restrictions

1. Eligible Grant Purposes

a. Grant funds must be used to establish and maintain a revolving loan fund to provide loans to eligible individuals for household water well systems.

b. Individuals may use the loans to construct, refurbish, rehabilitate, or replace household water well systems up to the point of entry of a home. Point of entry for the well system is the junction where water enters into a home water delivery system after being pumped from a well.

c. Grant funds may be used to pay administrative expenses associated with providing Household Water Well loans.

2. Ineligible Grant Purposes

a. Administrative expenses incurred in any calendar year that exceed 10 percent of the household water well loans made during the same period do not qualify for reimbursement.

b. Administrative expenses incurred before RUS executes a grant agreement with the recipient do not qualify for reimbursement.

c. Delinquent debt owed to the Federal Government does not qualify for reimbursement.

d. Grant funds may not be used to provide loans for household sewer or septic systems.

e. Household Water Well loans may not be used to pay the costs of water well systems for the construction of a new house.

f. Household Water Well loans may not be used to pay the costs of a home plumbing system.

V. Application Review Information

A. Criteria

This section contains instructions and guidelines on preparing the project proposal, work plan, and budget sections of the application. Also, guidelines are provided on the additional information required for RUS to determine eligibility and financial feasibility.

1. Project Proposal. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of the loan program. Explain what will be accomplished by lending funds to individual well owners. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should include the following elements:

a. Project Summary. Present a brief project overview. Explain the purpose of the project, how it relates to RUS' purposes, how the project will be executed, what the project will produce, and who will direct it.

b. Needs Assessment. To show why the project is necessary, clearly identify the economic, social, financial, or other problems that require solutions. Demonstrate the well owners' need for financial and technical assistance. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Provide information on the household income of the area and other demographical information. Address community needs.

c. Project Goals and Objectives. Clearly state the project goals. The objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the grant and loan program.

d. Project Narrative. The narrative should cover in more detail the items briefly described in the Project Summary. Demonstrate the grant applicant's experience and expertise in promoting the safe and productive use of individually-owned household water well systems. The narrative should address the following points:

(1) Document the grant applicant's ability to manage and service a revolving fund. The narrative may describe the systems that are in place for the full life cycle of a loan from loan origination through servicing. If a servicing contractor will service the loan portfolio, the arrangement and services provided must be discussed.

(2) Show evidence of the availability of funds from sources other than the HWWS grant. Describe the contributions the project will receive from your organization, state agencies, local government, other federal agencies, non-government organizations, private industry, and individuals. The documentation should describe how the contributions will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that the organization has secured commitments of significant financial support from other funding sources.

(4) List the fees and charges that borrowers will be assessed.

2. Work Plan. The work plan or scope of work must describe the tasks and activities that will be accomplished with available resources during the grant period. It must include who will carry out the activities and services to be performed and specific timeframes for completion. Describe any unusual or unique features of the project such as innovations, reductions in cost or time, or extraordinary community involvement.

3. Budget and Budget Justification. Use the Form SF–424A, Budget Information—Non-Construction Programs, to show your budget cost elements. The form summarizes resources as Federal and non-Federal funds and costs. ''Federal'' refers only to the HWWS Grant Program for which you are applying. ''Non-Federal'' refers to resources from your organization, state agencies, local government, other Federal agencies, non-government organizations, private industry, and individuals. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification.

a. Provide a budget with line item detail and detailed calculations for each budget object class identified in section B of the Budget Information form (SF–424A). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

b. Provide a narrative budget justification that describes how the categorical costs are derived for all capital and administrative expenditures, the matching contribution, and other sources of funds necessary to complete the project. Discuss the necessity, reasonableness, and allocability of the proposed costs. Consult OMB Circular A–122: ''Cost Principles for Non-Profit Organizations'' for information about appropriate costs for each budget category.

c. If the grant applicant will use a servicing contractor, the fees may be reimbursed as an administrative expense as provided in 7 CFR 1776.13. These fees must be discussed in the budget narrative. If the grant applicant will hire a servicing contractor, it must demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 134 (currently set at $100,000).

d. The indirect cost category should be used only when the grant applicant currently has an indirect cost rate approved by the Department of Agriculture or another cognizant Federal agency. A grant applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the grant applicant is in the process of initially developing or renegotiating a rate, the grant applicant shall submit its indirect cost proposal to the cognizant agency immediately after the applicant is advised that an award will be made. In no event, shall the indirect cost proposal be submitted later than three months after the effective date of the award. Consult OMB Circular A–122 for information about indirect costs.

4. Evidence of Legal Authority and Existence. The applicant must provide satisfactory documentation that it is legally recognized under state or Tribal and Federal law as a private non-profit organization. The documentation also must show that it has the authority to enter into a grant agreement with the RUS and to perform the activities proposed under the grant application. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, copies of state/Tribal statutes or laws establishing your organization, and copies of your organization's articles of incorporation and bylaws. Letters from IRS awarding tax-exempt status are not considered adequate evidence.

5. List of Directors and Officers. The applicant must submit a certified list of directors and officers with their respective terms.

6. IRS Tax Exempt Status. The applicant must submit evidence of tax

exempt status from the Internal Revenue Service.

7. Financial Information and Sustainability. The applicant must submit pro forma balance sheets, income statements, and cash flow statements for the last three years and projections for three years. Additionally, the most recent audit of the applicant's organization must be submitted.

B. Evaluation Criteria

Grant applications that are complete and eligible will be scored competitively based on the following scoring criteria:

Scoring criteria	Points
Degree of expertise and experience in promoting the safe and productive use of individually-owned household water well systems and ground water.	Up to 30 points.
Degree of expertise and successful experience in making and servicing loans to individuals	Up to 20 points.
Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a HWWS grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the HWWS grant and points corresponding to such percentages are as follows:	
0 to 9 percent	ineligible.
10 to 25 percent	5 points.
26 to 30 percent	10 points.
31 to 50 percent	15 points.
51 percent or more	20 points.
Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, and appears likely to be sustainable.	Up to 20 points.
Extent to which the goals and objectives are clearly defined, tied to the work plan, and measurable	Up to 10 points.
Lowest ratio of projected administrative expenses to loans advanced	Up to 10 points.
Administrator's discretion, considering such factors as:	
Creative outreach ideas for marketing HWWS loans to rural residents; factors include:	Up to 10 points.
1. Drought Mitigation. Where appropriate, loans should be directed to rural areas experiencing severe, extreme or exceptional drought as reported by the U.S. Drought Monitor located at *http://droughtmonitor.unl.edu/*.	
2. Emphasis on High Poverty Areas. To the maximum extent possible, loans should be directed to rural communities and rural areas with the lowest incomes with emphasis to areas where according to the American Community Survey data by census tracts show that at least 20% of the population is living in poverty.	
3. Emphasis on Targeted Underserved Areas. Loans are directed to Colonias or Substantially Underserved Trust Areas;	
4. Previous experiences demonstrating excellent utilization of a revolving loan fund grant; and optimizing the use of agency resources.	

C. Review Standards

1. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

2. Ineligible applications will be returned to the applicant with an explanation.

3. Complete, eligible applications will be evaluated competitively by a review team, composed of at least two RUS employees selected from the Water Programs Division. They will make overall recommendations based on the program elements found in 7 CFR part 1776 and the review criteria presented in this notice. They will award points as described in the scoring criteria in 7 CFR 1776.9 and this notice. Each application will receive a score based on the averages of the reviewers' scores and discretionary points awarded by the RUS Administrator.

4. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

5. Regardless of the score an application receives, if RUS determines that the project is technically infeasible, RUS will notify the applicant, in writing, and the application will be returned with no further action.

VI. Award Administration Information

A. Award Notices

RUS will notify a successful applicant by an award letter accompanied by a grant agreement. The grant agreement will contain the terms and conditions for the grant. The applicant must execute and return the grant agreement, accompanied by any additional items required by the award letter or grant agreement.

B. Administrative and National Policy Requirements

1. This notice, the 7 CFR part 1776, and the application guide implement the appropriate administrative and national policy requirements. Grant recipients are subject to the requirements in 7 CFR part 1776.

2. Direct Federal grants, sub-award funds, or contracts under the HWWS Grant Program shall not be used to fund inherently religious activities, such as worship, religious instruction, or proselytization. Therefore, organizations that receive direct assistance should take steps to separate, in time or location, their inherently religious activities from the services funded under the HWWS Grant Program. Regulations for the Equal Treatment for Faith-based Organizations are contained in 7 CFR part 16, which includes the prohibition against Federal funding of inherently religious activities.

C. Reporting

1. *Performance Reporting.* All recipients of HWWS Grant Program financial assistance must provide quarterly performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required. The final report may serve as the last annual report. The final report must include an evaluation of the success of the project.

2. *Financial Reporting.* All recipients of HWWS Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. The grantee will provide an audit report or financial statements as follows:

a. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the

project period covers more than one fiscal year.

b. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

3. *Recipient and Subrecipient Reporting.* The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170 Section 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov/portal/public/SAM/* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the subaward was made.

VII. Agency Contacts

A. *Web site: http://www.rurdev.usda.gov/UWP-individualwellsystems.htm.*

B. Phone: 202–720–0499.

C. Fax: 202–690–0649.

D. Email: JoyceM.Taylor@wdc.usda.gov.

E. Main point of contact: Joyce M. Taylor, Community Programs Specialist, Water Programs Division, Water and Environmental Programs, RUS, U.S. Department of Agriculture.

Dated: June 19, 2013.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2013–15210 Filed 6–25–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Basic Requirements for Special Exemption Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory under the Marine Mammal Protection, the Fur Seal, and the Endangered Species Acts.

OMB Control Number: 0648–0084.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 536.

Average Hours per Response: Permit applications: scientific research/enhancement (SR/EN), 50 hours; public display, 30; photograph and general authorization, 10 hours each; major permit amendments, 35; minor amendments, 3; reports: SR/EN, 12; general authorization, 8; all others, 2; recordkeeping for each permit, 2; documentation of marine mammal transport/transfer, 2 hours.

Burden Hours: 7,730.

Needs and Uses: This request is for a revision and extension of a currently approved information collection.

The Marine Mammal Protection Act (16 U.S.C. 1361 et seq.; MMPA), Fur Seal Act (16 U.S.C. 1151 et seq.; FSA), and Endangered Species Act (16 U.S.C. 1531 et seq.; ESA) prohibit certain activities affecting marine mammals and endangered and threatened species, with exceptions. Pursuant to section 104 of the MMPA and Section 10 of the ESA, special exception permits can be obtained for scientific research and enhancing the survival or recovery of a species or stock of marine mammals or threatened or endangered species. Section 104 of the MMPA also includes permits for commercial and educational photography of marine mammals; import and capture of marine mammals for public display; and, Letters of Confirmation under the General Authorization for scientific research that involves minimal disturbance to marine mammals. This information collection applies to protected species for which NMFS is responsible, including the marine mammal species of cetaceans (whales, dolphins and porpoises), pinnipeds (seals and sea lions), sea turtles (in water), white abalone, black abalone, smalltooth sawfish, largetooth sawfish (imports only), shortnose sturgeon, and Atlantic sturgeon. The information collection may be used for proposed listed species (e.g., corals).

This information collection is being revised to include submission of Letters of Intent under the General Authorization via the existing online application system, Authorizations and Permits for Protected Species (APPS), in addition to the current usage for SR/EN applications. This revision also includes adding Atlantic sturgeon and largetooth sawfish.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to retain or obtain benefits.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: June 20, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–15273 Filed 6–25–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Survey of Non-Tariff Trade Barriers to the U.S. Environmental Industry.

OMB Control Number: 0625–0241.

Form Number(s): ITA–4150P.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 33.

Number of Respondents: 200.

Average Hours Per Response: 10 minutes.

Needs and Uses: The environmental technologies industry has consistently cited the proliferation of non-tariff barriers as a factor that is making increased U.S. exports in this sector more difficult. This factor has been cited across all subsectors of environmental technologies products and all global geographic regions. The collection of information related to the experience of U.S. exporters with regard to these non-tariff measures is essential to the mission of the U.S. Department of Commerce Office of Energy and Environmental Industries. It allows accurate market analysis as well as support to industry in its export efforts and to the U.S. government in its trade negotiation efforts. The title of the information collection has been changed to reflect the title on the actual survey form.

Affected Public: Business or other for profit organizations.

Frequency: Constant availability via web or periodically via staff personal distribution.

Respondent's Obligation: 10 minutes per response.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov.*)

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: June 20, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–15275 Filed 6–25–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Bureau of Industry And Security

Order Making Denial of Export Privileges Applicable to a Related Person

In the Matter of: Enterysys Corporation, with last known addresses of: 1307 Muench Court, San Jose, CA 95131, and Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India Respondent.

Shekar Babu, a.k.a. Bob Babu, with last known addresses of: 1307 Muench Court, San Jose, CA 95131, and c/o Enterysys Corporation, Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India, Related Person.

Pursuant to Section 766.23 of the Export Administration Regulations (''EAR'' or ''Regulations''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the denial order that was issued against Respondent Enterysys Corporation (''Enterysys'') on December 3, 2012, and published in the **Federal Register** on December 14, 2012, and will remain in effect until December 14, 2022 (hereinafter the ''Denial Order''), applicable to the following individual as a person related to Enterysys:

Shekar Babu, a.k.a. Bob Babu, with last known addresses of: 1307 Muench Court, San Jose, CA 95131, and, c/o Enterysys Corporation, Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India.

I. Background

A. The Denial Order

The Denial Order issued as part of the Final Decision and Order issued by the Under Secretary of Commerce for Industry and Security (''Under Secretary'') concluding a formal BIS administrative proceeding against Enterysys. *In the Matter of Enterysys Corporation,* 11–BIS–0005 (Final Decision and Order dated Dec. 3, 2012, and published in the **Federal Register** on Dec. 14, 2012 (77 FR 74,458)). The Under Secretary affirmed the findings and conclusions contained in the Recommended Decision and Order issued by an Administrative Law Judge (''ALJ''), in which the ALJ found Enterysys in default, found the facts to be as alleged in the Charging Letter, and concluded that Enterysys had committed the sixteen (16) violations alleged in the Charging Letter.

BIS served the Charging Letter on Enterysys at its last known addresses in California and India. On August 2, 2011, Shekar Babu sent an email to BIS's counsel acknowledging receipt of the Charging Letter, which had been sent to Enterysys marked to Babu's attention as President of the company. Eventually, Enterysys/Babu ceased communicating with BIS and Enterysys failed to answer the Charging Letter, requiring BIS to move for a default order.

As alleged in the Charging Letter, determined by the ALJ, and affirmed by the Under Secretary, Enterysys engaged in the following conduct in violation of the Regulations:

Charge 1 15 C.F.R. § 764.2(h)—Evasion

In or about May 2006, Enterysys engaged in a transaction and took other actions with intent to evade the provisions of the Regulations. Through false statements to a U.S. manufacturer and freight forwarder, Enterysys obtained and exported to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under Export Control Classification Number (''ECCN'') 1C010, controlled for National Security reasons, and valued at $15,460, without obtaining the required license pursuant to Section 742.4 of the Regulations. Enterysys purchased the ceramic cloth from a U.S. manufacturer and arranged for the manufacturer to ship the item to a freight forwarder identified by Enterysys, knowing that a license was required for the export of the ceramic cloth to India. On or about May 1, 2006, when Enterysys asked that the U.S. manufacturer to ship the ceramic cloth to Enterysys's freight forwarder instead of directly to Enterysys, Enterysys was informed by the manufacturer that the material ''is a controlled commodity in terms of export to India,'' and the manufacturer asked Enterysys for assurance and a ''guarantee'' that the ceramic cloth would not be exported to India. In response, also on or about May 1, 2006, Enterysys stated, ''This is not going out of USA.'' In addition, in arranging for the purchase from the U.S. manufacturer, Enterysys asked the manufacturer not to put any packing list, invoice or certificate of conformance in the box with the ceramic cloth, but rather to fax the documents to Enterysys. Enterysys also arranged for its freight forwarder to ship the ceramic cloth to Enterysys in India. Once the manufacturer shipped the ceramic cloth to the freight forwarder identified by Enterysys, Enterysys provided the freight forwarder with shipping documentation on or about May 2, 2006, including a packing list and invoice that falsely identified the ceramic cloth as twenty

[1] The Regulations currently are codified at 15 CFR parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 F. 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 and Supp. IV 2010)).

square meters of ''used waste material'' with a value of $200. The ceramic cloth arrived at the freight forwarder on or about May 3, 2006, and was exported pursuant to Enterysys's instructions to India on or about May 5, 2006. Enterysys undertook these acts to facilitate the export of U.S.-origin ceramic cloth to India without the required Department of Commerce license and to avoid detection by law enforcement. In so doing, Enterysys committed one violation of Section 764.2(h) of the Regulations.

Charge 2 15 C.F.R. § 764.2(a)—Engaging in Prohibited Conduct by Exporting Ceramic Cloth to India without the Required License

On or about May 5, 2006, Enterysys engaged in conduct prohibited by the Regulations by exporting to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under ECCN 1C010, controlled for National Security reasons and valued at $15,460, without the Department of Commerce license required pursuant to Section 742.4 of the Regulations. In so doing, Enterysys committed one violation of Section 764.2(a) of the Regulations.

Charges 3–13 15 C.F.R. § 764.2(a)—Engaging in Prohibited Conduct by Exporting Electronic Components to a Listed Entity without the Required Licenses

On eleven occasions between on or about August 12, 2005 and November 27, 2007, Enterysys engaged in conduct prohibited by the Regulations by exporting various electronic components, designated as EAR99 items [2] and valued at a total of $38,527, from the United States to Bharat Dynamics Limited (''BDL'') in Hyderabad, India, without the Department of Commerce license required by Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. BDL is an entity that is designated in the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, and at all times pertinent hereto that designation included a requirement that a Department of Commerce license was required for all exports to BDL. In so doing, Enterysys committed eleven violations of Section 764.2(a) of the Regulations.

Charge 14 15 C.F.R. § 764.2(e)—Acting with Knowledge of a Violation

On or about July 11, 2007, in connection with the transaction described in Charge 11, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $8,644, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys provided these items to a freight forwarder and was informed by the freight forwarder that items being exported to BDL required an export license and that BDL was on the Entity List. The freight forwarder also directed Enterysys to the BIS Web site. The freight forwarder then returned the items to Enterysys. Subsequently, Enterysys provided the items to a second freight forwarder for export to BDL even though Enterysys knew that an export license was required and had not been obtained. In so doing, Enterysys committed one violation of Section 764.2(e) of the Regulations.

Charges 15–16 15 C.F.R. § 764.2(e)—Acting with Knowledge of a Violation

On two occasions on or about November 7, 2007 and November 27, 2007, in connection with the transactions described in Charges 12 and 13, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $11,266.85, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys was informed by a freight forwarder that items being exported to BDL required a license and that BDL was on the Entity List. The freight forwarder also directed Enterysys to the BIS Web site. Subsequently, Enterysys wrote an email on or about October 11, 2007, to the Department of Commerce requesting guidance about license requirements to BDL, and in response was provided with a copy of the Entity List, advised, among other things, that all exporting companies need to check transactions against certain lists, and provided with a link to such lists on the BIS Web site. Thereafter, on October 24, 2007, Enterysys's President Shekar Babu wrote an email stating that he was ''working directly with US Govt on the export license'' and that the license would ''take a month.'' Nevertheless, Enterysys did not apply for or obtain the required export license. In so doing, Enterysys committed two violations of Section 764.2(e) of the Regulations.

As noted in Final Decision and Order, the ''ALJ also recommended that the Under Secretary deny Enterysys's export privileges for a period of ten years, citing, *inter alia,* Enterysys's 'evasive and knowing misconduct and . . . series of unlawful exports,' including 'deliberate efforts to evade the Regulations in connection with the export of . . . an item controlled for national security reasons,' and its three similar 'knowledge violations in connection with the unlicensed export of electronic components to BDL.' '' Final Decision and Order, at 74,460 (quoting Recommended Decision and Order at 15–16). The ALJ further noted that ''Respondent's misconduct exhibited a severe disregard for the Regulations and U.S. export controls and a monetary penalty is not likely to be an effective deterrent in this case.'' *Id.* (quoting Recommended Decision and Order at 17–18).

The Under Secretary agreed with this recommendation and imposed the Denial Order given, *inter alia,* the nature and number of the violations and the importance of deterring Enterysys and others from acting to evade the Regulations and otherwise knowingly violate the Regulations. *Id.* at 8.

B. Related Person's Notice Letter

This matter is now before me upon BIS's request to add Shekar Babu to the Denial Order as a related person to Enterysys.[3]

Pursuant to the Regulations, BIS notified Shekar Babu of its intent to add him as a person related to Enterysys by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, in light of his position as President of Enterysys. This notice was provided by letter on February 13, 2013, sent in accordance with Sections 766.5(b) and 766.23(b) of the Regulations.

Shekar Babu never responded.

II. Application of Section 766.23 (Related Persons)

A. Legal Standard

Section 766.23(a) of the Regulations provides, in pertinent part, that:

> In order to prevent evasion, certain types of orders under [Part 766] may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BIS.

15 CFR 766.23(a). Thus, a denial order may be made applicable to related persons, by adding them to the denial order at issue, in order to prevent evasion of the order. *Id.*

B. Findings

Based on the record here, I find that Shekar Babu is a related person to Enterysys and that he should be added to the Denial Order in order to prevent its evasion. Babu is the President of Enterysys. In addition, he was personally involved in at least some of the transactions and violations that led to the issuance of the Denial Order

[2] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2005–07).

[3] I have been designated by the Under Secretary as the authorized official to consider BIS's request under Section 766.23 of the Regulations. *See* 15 CFR 766.23(b).

against Enterysys, including knowledge and evasion violations.

As stated in the knowledge violations set forth in Charges 15–16 of the Charging Letter, Babu falsely stated in connection with Enterysys's planned export of electronic components to Bharat Dynamics Limited (''BDL''), an Indian entity on BIS's Entity List at all pertinent times, that he was ''working directly with US Govt on the export license'' and that the license would ''take a month.'' In reality, as also set forth in Charges 12–13, neither Babu nor Enterysys ever applied for or obtained the required export licenses, and during the course of the following five weeks, two unlawful exports of the items were made to BDL. Overall, while operating under Babu's management, Enterysys made eleven (11) unlawful exports to BDL, *see* Charges 3–13, which was placed on the Entity List in 1998 through a rule published in the **Federal Register** establishing an entity-specific license requirement for certain entities, including BDL, that were ''determined to be involved in nuclear or missile activities.'' *See India and Pakistan Sanctions and Other Measures,* 63 FR 64,322 (Nov. 19, 1998).[4]

Charge 1 involved similar conduct by Babu. As set forth in Charge 1, through false statements to a U.S. manufacturer and freight forwarder, Enterysys obtained and exported to India ceramic cloth, an item controlled under the Regulations for National Security reasons, without obtaining the required BIS export license. The manufacturer asked Enterysys for assurance and a ''guarantee'' that the ceramic cloth would not be exported to India. In response, on or about May 1, 2006, the U.S. manufacturer received an email from Enterysys stating, ''This is not going out of USA.'' I have been provided with a copy of this email, originally obtained by BIS's Office of Export Enforcement, with regard to the instant related person's request. Although he is not identified by name in Charge 1, the email was sent from Mr. Babu's Enterysys email address. Within days of this email, and pursuant to Enterysys's instructions to its freight forwarder, the item was exported to India without a license. *See* Charges 1–2.

Based on the foregoing and the record as a whole in this matter, I find that Shekar Babu is a person related to Enterysys by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the Denial Order against Enterysys Corporation, which will remain in effect until December 14, 2022, should be made applicable to Shekar Babu in order to prevent evasion of that order.

III. Order

It is therefore ordered:

First, that from the date this Order is published in the **Federal Register**, until December 14, 2022, Shekar Babu, also known as Bob Babu, located at the following addresses: 1307 Muench Court, San Jose, CA 95131; and c/o Enterysys Corporation, Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India (hereinafter referred to as ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order is effective upon publication in the **Federal Register** and shall remain in effect until December 14, 2022.

Entered this 19th day of June 2013.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2013–15272 Filed 6–25–13; 8:45 am]

BILLING CODE P

[4] BDL remained on the Entity List at all times pertinent to this case, and in fact until January 25, 2011, more than three years after Enterysys's violations at issue here, which occurred between August 12, 2005 and November 27, 2007. *See U.S.-India Bilateral Understanding: Revisions to U.S. Export and Reexport Controls Under the Export Administration Regulations,* 76 FR 4,228 (Jan. 25, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; California Recreational Groundfish Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 26, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Office, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rosemary Kosaka, (831) 420–3988 or *Rosemary.Kosaka@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) plans to collect data to increase the agency's understanding of California saltwater angler preferences relative to Pacific groundfish. Pacific groundfish caught in California's recreational fishery include about 17 species of rockfish, as well as lingcod, cabezon, and California scorpionfish. The number and diversity of species caught in this fishery poses a regulatory challenge for State and Federal fisheries managers. Information to be collected pertains to anglers' recreational saltwater fishing activities in California (including groundfish); their attitudes and preferences regarding particular groundfish species and groundfish regulations; and angler demographics. The data collected will provide NMFS, as well as state agency partners such as the California Department of Fish and Wildlife (CDFW), with information useful for understanding current groundfish fishing behavior and possible responses to potential regulatory changes.

II. Method of Collection

A random sample of recreational anglers who target groundfish in California will be asked to complete a voluntary mail-based survey questionnaire.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,500.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 625.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comment are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 20, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–15276 Filed 6–25–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Open Meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, July 23, 2013 from 2:00 p.m. to 5:00 p.m. EDT and Wednesday, July 24, 2013 from 1:00 p.m. to 4:05 p.m. EDT. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: Conference call. Public access is available at 1315 East-West Highway, Room 11836 in Silver Spring, MD. Please check the SAB Web site *http://www.sab.noaa.gov/Meetings/meetings.html* for address and directions to the meeting location. Members of the public will not be able to dial in to this meeting.

Status: The meeting will be open to public participation with a 10 minute public comment period on July 24 from 1:05–1:15 p.m. (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of two (2) minutes. Individuals or groups planning to make a verbal presentation should contact the SAB Executive Director by July 17, 2013 to schedule their presentation. Written comments should be received in the SAB Executive Director's Office by July 17, 2013 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after July 17, 2013 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on July 17, 2013, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room

11230, 1315 East-West Hwy., Silver Spring, MD 20910.

Matters To Be Considered: The meeting will include the following topics: (1) NOAA Response to the SAB Review of the Ocean Exploration and Research Program; (2) NOAA Social Science Needs Assessment; (3) Terms of Reference and Membership Approach for Gulf Coast Ecosystem Restoration Science Program Advisory Working Group; (4) National Academy of Public Administration Report: Forecasting the Future-Assuring the Capacity of the National Weather Service; (5) Arctic Policy and Management; (6) Arctic Science; (7) Climate Working Group-Proposed Change in Terms of Reference and Working Group Update; (8) Ecosystem Sciences and Management Working Group-Proposed New Member and Working Group Update; (9) Environmental Information Services Working Group-Membership and Working Group Update; and (10) Updates from Data Archive and Access Requirements and Ocean Exploration Advisory Working Groups.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459. Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: June 20, 2013.

Jamie Krauk,

Acting Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–15279 Filed 6–25–13; 8:45 am]

BILLING CODE 3510–KD–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2013–0017]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, Report of Terms of Credit Card Plans (Form FR 2572).

DATES: Written comments are encouraged and must be received on or before July 26, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov.* Please do not submit comments to this email box.

SUPPLEMENTARY INFORMATION:

Title of Collection: Report of Terms of Credit Card Plans.

OMB Control Number: 3170–0001.

Bureau Form Number: FR 2572.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 150.

Estimated Total Annual Burden Hours: 75.

Abstract: The Form FR 2572 collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards. The data enable the Bureau to present information to the public on terms of credit card plans.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on April 8, 2013, (78 FR 20899). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 19, 2013.

Matthew Burton,

Acting Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2013–15311 Filed 6–25–13; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 13–C0006]

Ross Stores, Inc. et al., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Ross Stores, Inc. et al., containing a civil penalty of $3,900,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 11, 2013.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 13–C0006, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Mary B. Murphy, Assistant General Counsel, Office of the General Counsel, Consumer Product Safety Commission,

4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7809.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 21, 2013.

Todd A. Stevenson,

Secretary.

UNITED STATES OF AMERICA CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of CPSC Docket No. *13–C0006,*
Ross Stores, Inc., et al.

SETTLEMENT AGREEMENT

In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (CPSA), and 16 C.F.R. § 1118.20, Ross Stores, Inc., Ross Procurement, Inc., Ross Merchandising, Inc., and Ross Dress for Less (Ross), and the U.S. Consumer Product Safety Commission (Commission), through its staff (Staff), hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff's charges set forth below.

PARTIES

The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the Consumer Product Safety Act, (CPSA), 15 U.S.C. §§ 2051–2089. By executing this Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

Ross is a corporation, organized and existing under the laws of Delaware, with its principal place of business at 4440 Rosewood Drive, Pleasanton, CA 94588.

STAFF CHARGES

On multiple occasions, and during various periods from January 2009 to February 2012, Ross sold and/or held for sale, 12 series of various styles, models, and quantities of children's upper outerwear products with drawstrings at the neck and/or waist, for a total of approximately 23,000 garments, including, but not limited to, the following: Children's Apparel Network, Ltd. (Children's Apparel) Young Hearts hooded sweater; Byer California (Byer) Girls cargo pocket jacket with neck and waist drawstring; Puma North America Inc. (Puma) USA V-Kon training jacket with waist drawstrings; LA Fashion Hub, Inc., jacket with neck drawstring; LA Fashion jacket with neck drawstrings; Umbro International, Ltd., jacket with waist drawstrings; Hot Chocolate Athletic set jacket with waist drawstrings; Bonded Apparel hooded fleece jacket with neck drawstrings; Me Jane/Louise Paris Ltd., fur hood fleece with waist drawstring; MeJane Louise Paris, Ltd., fur hood bubble jacket with waist drawstrings; LANY Group LLC terry hooded sweatshirt with neck drawstring; and YMI Jeanswear hooded sweatshirt with neck drawstrings. The products identified in this paragraph are collectively referred to as ''Garments.''

Ross sold the Garments to consumers, and/or held the Garments for sale with the intent to ultimately sell to consumers.

The Garments are ''consumer product[s],'' and at all relevant times, Ross was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. § 2052(a)(5), (8), and (13).

In February 1996, staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (Guidelines) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items, such as playground equipment, bus doors, or cribs. In the Guidelines, staff recommends that no children's upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

In June 1997, ASTM adopted a voluntary standard (ASTM F1816–97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter also states that staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (FHSA), section 15(c), 15 U.S.C. § 1274(c). The letter also references the CPSA's section 15(b) (15 U.S.C. § 2064(b)) reporting requirements.

In September 2009, Ross paid a civil penalty in the amount of $500,000 to settle staff charges that the Firm failed to report four children's upper outerwear products that it distributed in commerce during various periods in 2006, 2007, and 2008. Throughout the course of that civil penalty matter, Ross received repeated reminders about the drawstring hazards and applicable law.

On July 19, 2011, the Commission published in the Federal Register a Final Rule that designates the hazards presented by drawstrings in children's upper outerwear as substantial product hazards. The Final Rule, which became effective on August 18, 2011, provides that ''[c]hildren's upper outerwear in sizes 2T to 16 or the equivalent, and having one or more drawstrings, that is subject to, but not in conformance with, the requirements of'' the ASTM Standard, shall be deemed to be a substantial product hazard under CPSA section 15(a)(2). 16 C.F.R. § 1120.3(b)(1).

Staff provided Ross with multiple direct notifications of the hazards associated with drawstrings on children's upper outerwear.

Ross's distribution in commerce of the Garments did not comply with the 1996 staff Guidelines, ASTM F1816–97, staff's May 2006 defect notice, or the Final Rule, and posed strangulation hazards to children.

Ross's distribution of two series of the Garments (Children's Apparel and Byer) occurred in part, during the same period of time as the investigation and negotiation of Ross's 2009 civil penalty matter. Ross's distribution of four of the remaining 10 series of violations occurred partially after the effective date of the Final Rule; the other six series were distributed entirely after the effective date of the Final Rule.

Ross has informed the Commission that there have been no reported incidents or injuries associated with the Garments.

The Commission, in cooperation with Ross and/or other firms that manufactured, imported, or distributed the Garments announced recalls of the Garments.

Based in part on information available through the sources set forth in paragraphs 7 through 11, Ross had presumed and actual knowledge that the Garments distributed in commerce posed strangulation hazards and presented substantial risks of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Ross obtained information that reasonably supported the conclusion that the Garments contained defects that could create substantial product hazards or that the Garments created unreasonable risks of

serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), Ross was required to inform the Commission immediately of these defects and risks.

Ross knowingly and repeatedly failed to immediately inform the Commission about the Garments, as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). These knowing failures violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, these knowing failures subjected Ross to civil penalties.

ROSS'S RESPONSE

Ross denies Staff's charges above, including but not limited to any claim that Ross failed to timely report to the Commission the sale or distribution of any children's upper outwear products with drawstrings pursuant to § 15(b) of the CPSA.

Ross enters into this Agreement to settle this matter without the expense of litigation. Ross enters into this Agreement and agrees to pay the amount referenced below in compromise of staff's charges. Ross's entering into this Agreement is not an admission of liability of any kind, whether legal or factual.

Ross does not manufacture the products it offers for sale in its stores. It purchases a wide variety of products, including children's apparel, from thousands of vendors and other suppliers. Ross distribution centers and warehouses processed approximately 57 million units of children's apparel in 2011, and approximately 1.4 million of those units were children's outerwear. Consistent with practice in the retail industry, Ross contractually requires its vendors to supply products that comply with all federal, state, and local laws, regulations, and standards, and relies on its suppliers to provide compliant products. Notwithstanding this reliance, Ross has implemented policies and practices to preclude such garments being purchased by Ross, held in inventory, or sold in interstate commerce. Since the Commission first issued the Guidelines in 1996, Ross's children's apparel purchasing policy has prohibited Ross's apparel buyers from purchasing children's upper outerwear with drawstrings. Prior to 2009, Ross's management had procedures in place that it reasonably believed prevented Ross's purchase of children's upper outwear products with drawstrings.

Ross first learned that it had sold the Children's Apparel and Byer Garments upon receiving notice of the fact that they were being recalled by the vendors in March and April 2010. Prior to that time, Ross's compliance and safety personnel and children's apparel buyers had no knowledge, whether actual or constructive, that the Garments actually supplied by Children's Apparel and Byer contained drawstrings. Ross did not file a report pursuant to § 15(b) of the CPSA because it believed that the Commission was adequately informed of the alleged defect, due to the Commission's involvement in the recall of these Garments.

Subsequent to the Children's Apparel and Byer recalls, and in response to staff's investigation regarding those Garments, Ross undertook an extensive, and voluntary, manual audit of all children's upper outerwear in all of its stores and distribution centers in the fall and winter of 2011, to determine whether it had unintentionally purchased other products subject to the Final Rule. This voluntary audit required Ross's personnel in all of its approximately 1,125 stores, as well as its warehouses, to visually inspect all items of children's apparel then in inventory, to determine whether certain items failed to comply. The audit identified 10 of the 12 series of Garments, accounting for more than 19,000 of the approximately 23,000 Garments, which Ross reported to the CPSC.

Prior to the audit, Ross's product compliance and safety personnel and children's apparel buyers had no knowledge, whether actual or constructive, that the Garments discovered in the audit actually supplied by Ross's suppliers contained drawstrings. Ross promptly notified the Commission pursuant to § 15(b) of the CPSA upon discovering as a result of the audit that it had purchased and sold many of the Garments, as well as a number of other children's upper outerwear products that appeared to contain drawstrings, but which Staff determined were not subject to the Guidelines.

Upon learning in 2009 that, despite the procedures it had in place, the Children's Apparel and Byer Garments had been discovered in Ross's stores, Ross began developing new compliance measures to augment its existing policies, including a product recall inventory and sales tracking system, the creation of a dedicated product safety personnel position to address product safety compliance, training, and policy issues, increased training of personnel who order children's apparel for sale in Ross's stores and process children's apparel in its distribution centers, an enhanced distribution center review process, in which children's outerwear is audited for compliance with the Final Rule prior to distribution to stores, and a point-of-sale register lock system that prohibits the sale of recalled products. These compliance measures were implemented and refined through 2012 and will continue to be evaluated and modified, as appropriate.

Ross is unaware of any incidents or injuries associated with the Garments.

AGREEMENT OF THE PARTIES

Under the CPSA, the Commission has jurisdiction over the matter involving the Garments and over Ross.

The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Ross, or a determination by the Commission, that Ross knowingly violated the CPSA.

In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Ross shall pay a civil penalty in the amount of three million nine hundred thousand dollars ($3,900,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer via *www.pay.gov.*

Following staff's receipt of this Agreement executed on behalf of Ross, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the Federal Register, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If within fifteen (15) calendar days the Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the Federal Register, in accordance with 16 C.F.R. § 1118.20(f).

This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Ross; and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Ross; and (ii) the date of issuance of the final Order, for good and valuable consideration, Ross hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Ross failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

Ross represents and agrees that it has implemented and will maintain a compliance program designed to assure compliance with the Final Rule and CPSA § 15(b). In addition to the program components set out in paragraph 25 of this Agreement, Ross represents that the ongoing compliance program contains (i) written standards and policies; (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iii) appropriate communication of company compliance-related policies and procedures regarding the Final Rule and CPSA § 15(b) to all applicable employees through training programs, or otherwise; (iv) management oversight of compliance and appropriate personnel responsibility for implementing compliance; and (v) a policy to retain all compliance-related records for at least five (5) years and availability of such records to Commission staff, upon reasonable request.

Ross represents and agrees that it has designed and implemented internal controls and procedures that are designed to assure that (i) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (ii) prompt disclosure is made to Ross's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect Ross's ability to record, process and report to the Commission in accordance with applicable law.

Upon reasonable request of staff, Ross shall provide written documentation of its procedures, including, but not limited to, the effective dates of its procedures and improvements thereto, and shall cooperate fully and truthfully with staff and shall, upon reasonable notice, make available all non-privileged information and materials, and personnel with direct involvement in such procedures, if reasonably requested by staff in relation to an investigation of noncompliance by Ross with the Final Rule and/or CPSA § 15(b).

The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order in a press release or other public notice (including but not limited to social media, such as Twitter and Facebook), the content of which shall substantially conform to the terms of this Settlement Agreement and any CPSC press releases previously issued in connection with the recalls of the Garments.

Ross represents that the Agreement: (i) is freely and voluntarily entered into, without any degree of duress or compulsions whatsoever; (ii) has been duly authorized, and (iii) constitutes the valid and binding obligation of Ross, enforceable against Ross in accordance with its terms. The individuals signing the Agreement on behalf of Ross represent and warrant that they are duly authorized by Ross, including Ross Stores, Inc., Ross Procurement, Inc., Ross Merchandising, Inc., and Ross Dress for Less, to execute the Agreement.

The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute this Agreement.

The Agreement is governed by the laws of the United States.

The Agreement and the Order shall apply to, and be binding upon, Ross and each of its officers, agents, servants, employees, and attorneys; successors, transferees, and assigns, and a violation of the Agreement or Order may subject Ross, and each of its officers, agents, servants, employees, and attorneys; successors, transferees, and assigns to appropriate legal action.

The Agreement and Order constitute the complete agreement between the parties on the subject matter contained therein.

The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Ross agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

Ross Stores, Inc.

Dated: *6/7/13*

By: _____

Michael O'Sullivan
President and Chief Operating Officer
Ross Stores, Inc.

Dated: *6/10/13*

By: _____

Jeffrey B. Margulies, Esq.
William L. Troutman, Esq.
Fulbright & Jaworski L.L.P.
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
Counsel—Ross Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Stephanie Tsacoumis
General Counsel

Dated: *6/12/13*

By: _____

Mary B. Murphy
Assistant General Counsel
Office of the General Counsel

UNITED STATES OF AMERICA CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of
Ross Stores, Inc., et al.)
CPSC Docket No. *13–C0006*

ORDER

Upon consideration of the Settlement Agreement entered into among Ross Stores, Inc., Ross Procurement, Inc., Ross Merchandising, Inc. and Ross Dress for Less (Ross), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over Ross, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Ross shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of three million nine

hundred thousand dollars ($3,900,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer to the Commission via: *www.pay.gov.* Upon the failure of Ross to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Ross at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Ross fails to make such payment, or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the *21st* day of *June,* 2013.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission.
[FR Doc. 2013–15258 Filed 6–25–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction; Notice of Meeting

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Advisory Board meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), the Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) announce the following advisory board meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR).

DATES: Tuesday, July 23, 2013, from 7:30 a.m. to 6:30 p.m. The public is invited to attend. A public comment session is scheduled from 4:00 p.m. to 5:00 p.m.

ADDRESSES: Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose Reconstruction may be contacted toll-free at 1–866–657–VBDR (8237). Additional information may be found at *http://www.vbdr.org.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate information related to the Board's mission to provide guidance and oversight of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist the VA and DTRA in communicating with the veterans.

Meeting Agenda: The meeting will open with an introduction of the Board. After introductions, the following briefings will be presented: ''Review of Atomic Veterans Epidemiology Study''; ''Update on the NTPR Dose Reconstruction Program''; ''Update on the VA Radiation Claims Compensation program for Veterans''; ''Overview of the VA's Office of Post Deployment Health''; ''Presentation of the VA/DTRA/VBDR Atomic Veterans Communications Plans''; ''McMurdo Sound Radiation Dose Assessment''; ''Utility of NIOSH–IREP Probability of Causation Software for Evaluating Probability of Disease Causation for McMurdo Station Veterans''; ''VBDR SC1 and SC2 Comments on McMurdo Station Dose Reconstruction and NIOSH–IREP's Utility for Evaluating Probability of Disease Causation for McMurdo Station Veterans''. The Board members will then have a discussion period to address any issues brought up during the presentations. The four subcommittees will also report on their activities from the past year. The subcommittees are the ''Subcommittee on DTRA Dose Reconstruction Procedures'', the ''Subcommittee on VA Claims Adjudication Procedures'', the ''Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program'', and the ''Subcommittee on Communication and Outreach.''

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited by the size of the meeting room. All persons must sign in legibly at the registration desk.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c), interested persons may submit a written statement for consideration by the Veterans' Advisory Board on Dose Reconstruction. Written statements should be no longer than two type-written pages and must address: the issue, discussion, and recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information. Individuals submitting a written statement may submit their statement to the Board at 801 N. Quincy Street, Suite 700, Arlington, VA 22203, at any time. However, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Veterans' Advisory Board on Dose Reconstruction until its next open meeting.

The Chairperson will review all timely submissions with the Designated Federal Officer, and ensure they are provided to members of the Veterans' Advisory Board on Dose Reconstruction before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

Public Comments: The July 23, 2013 meeting is open to the public. A one-hour session, scheduled from 4:00 p.m. to 5:00 p.m., will be reserved for public comments on issues related to the tasks of the Veterans' Advisory Board on Dose Reconstruction. Speaking time will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is nominally five minutes each. All persons who wish to speak at the meeting must sign in legibly at the registration desk. Speakers who wish to expand on their oral statements are invited to submit a written statement to the Veterans' Advisory Board on Dose Reconstruction at 801 N. Quincy Street, Suite 700, Arlington, VA 22203.

Committee's Designated Federal Officer or Point of Contact: Mr. Stephen Polchek, DoD, Defense Threat Reduction Agency/J/2/5/8R–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *Stephen.polchek@dtra.mil,* Phone: 703–767–8891.

Dated: June 21, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–15244 Filed 6–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2013–0018]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend two Systems of Records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on July 29, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before July 26, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site *http://dpclo.defense.gov/privacy/SORNs/component/army/index.html.*

The Department of the Army proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 21, 2013.

Aaron Siegel,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0403.11

SYSTEM NAME:

Personnel Departure Clearance Records (August 9, 1996, 61 FR 41572).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; the civilian personnel offices located at the Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''All employees of the Army and Air Force Exchange Service (Exchange).''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army and 8013, Secretary of the Air Force; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 215–8/AFI 34/211(I), Army and Air Force Service Operations; and E.O. 9397 (SSN), as amended.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records should be cut off at the close of the fiscal year of departure. Destroy, by shredding, one year after cut off.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and date and place of separation.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and date and place of separation.''

* * * * *

AAFES 0405.11

SYSTEM NAME:

Individual Health Records (April 4, 2003, 68 FR 16484).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598 and Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide where medical facilities are available for employee use.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Employees of the Army and Air Force Exchange Service (Exchange).''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Department of the Air Force; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Non-appropriated Fund Instrumentalities; and Army Regulation 215–8/AFI 34–211(I), Army and Air Force Service Operations; and E.O. 9397 (SSN), as amended.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records should be cut off at close of fiscal year in which employee is separated or transferred. Destroy, by shredding, six years after cut off.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, ATTN: Records Management Office, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, ATTN: ~~Director~~ Records Management Office, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.''

* * * * *

[FR Doc. 2013–15237 Filed 6–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0055]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Financial Report for the Endowment Challenge Grant Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 26, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0055 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Financial Report for the Endowment Challenge Grant Program.

OMB Control Number: 1840–0564.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 2,500.

Total Estimated Number of Annual Burden Hours: 3,125.

Abstract: This financial reporting form will be utilized for Title III Part A, Title III Part B and Title V Program Endowment Activities and Title III Part C Endowment Challenge Grant Program. The purpose of this Annual Financial Report is to have the grantees report annually the kind of investments that have been made, the income earned and spent, and whether any part of the Endowment Fund Corpus has been spent. This information allows us to give technical assistance and determine whether the grantee has complied with the statutory and regulatory investment requirements.

Dated: June 20, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–15221 Filed 6–25–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Career and Technical Education Program (NHCTEP); Correction

Catalog of Federal Domestic Assistance (CFDA), Number: 84.259A.

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On June 14, 2013, the Office of Vocational and Adult Education in the U.S. Department of Education published in the **Federal Register** (78 FR 35877) a notice inviting applications for new awards for fiscal year (FY) 2013 for NHCTEP. This notice corrects the ''Applications Available'' date and the ''Deadline for Transmittal of Applications'' date.

The correct date for when applications are available is June 26, 2013.

The correct deadline for transmittal of applications is July 26, 2013.

DATES: Effective June 26, 2013.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of June 14, 2013 (78 FR 35877), on page 35877, in the second column, under the **DATES** heading, we correct the ''Applications Available'' caption to read:

Applications Available: June 26, 2013.

Also, on page 35877, in the third column, under the **DATES** heading, we correct the ''Deadline for Transmittal of Applications'' caption to read:

Deadline for Transmittal of Applications: July 26, 2013.

On page 35881, in section IV, Submission Dates and Times, in the third column, we correct the ''Applications Available'' caption to read:

Applications Available: June 26, 2013.

Lastly, on page 35881, in section IV, Submission Dates and Times, in the third column, we correct the ''Deadline for Transmittal of Applications'' caption to read:

Deadline for Transmittal of Applications: July 26, 2013.

Program Authority: 20 U.S.C. 2326(a)–(h).

FOR FURTHER INFORMATION CONTACT: Linda Mayo, U.S. Department of Education, 400 Maryland Avenue SW., Room 11075, Potomac Center Plaza, Washington, DC 20202–7241. Telephone: (202) 245–7792, or by email: *linda.mayo@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under For Further Information Contact in this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Johan Uvin, Deputy Assistant Secretary for Policy and Strategic Initiatives, to perform the functions and duties of the Assistant Secretary for Vocational and Adult Education.

Dated: June 21, 2013.

Johan Uvin,

Deputy Assistant Secretary for Policy and Strategic Initiatives, Delegated Authority to Perform the Functions and Duties of the Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2013–15260 Filed 6–25–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Exchange/Sale Report, Excess Personal Property Furnished to Non-Federal Recipients, Agency Report of Motor Vehicle Data, Annual Motor Vehicle Fleet Report, OMB Control Number 1910–1000. This information collection request covers information necessary to prepare and submit annual property reports required by 41 CFR part 102 and the Office of Management and Budget.

DATES: Comments regarding this collection must be received on or before July 26, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503,

and to:

Sarah Ball, Director, Personal Property Policy Division, MA–653/L'Enfant Plaza Building, U. S. Department of Energy, Washington, DC 20585–1615, *sarah.ball@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Ball, at the above address, or by telephone at (202) 287–1563, or by fax at (202) 287–1656.

Information for the Excess Personal Property Furnished to Non-Federal Recipients and the Exchange/Sale Report is collected using GSA's Personal Property Reporting Tool and can be found at the following link: *https://gsa.inl.gov/property/*.

Information for the Agency Report for Motor Vehicle Data and the Annual Motor Vehicle Fleet Report is collected using the Federal Automotive Statistical Tool and can be found at the following link: *https://fastweb.inel.gov/*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–1000. (2) *Information Collection Request Title:* Exchange/Sale Report, Excess Personal Property Furnished to Non-Federal Recipients, Agency Report of Motor Vehicle Data, Annual Motor Vehicle Fleet Report. (3) *Type of Request:* Renewal. (4) *Purpose:* The information being collected is data required in order to submit annual personal property reports as required by 41 CFR part 102 and the Office of Management and Budget. Respondents to this information collection request will be the Department of Energy's Management and Operating Contractor and other major site contractors. (5) *Annual Estimated Number of Respondents:* 176. (6) *Annual Estimated Number of Total Responses:* 176. (7) *Annual Estimated Total Burden Hours:* 2552. (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Authority: 41 CFR 102–39.75, 41 CFR 102–36.295 and 41 CFR 102–36.300, 41 CFR 102–34.335, OMB Circular A–11 Section 25.5.

Issued in Washington, DC on June 19, 2013.

Carmelo Melendez,

Senior Real Property Officer and Director Office of Property, Department of Energy.

[FR Doc. 2013–15257 Filed 6–25–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 31, 2013, 1:00 p.m.–7:00 p.m.

ADDRESSES: Fuller Lodge, 2132 Central Avenue, Los Alamos, NM 87544.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Lee Bishop Establishment of a Quorum: Roll Call and Excused Absences, William Alexander Welcome and Introductions, Carlos Valdez, Chair Approval of Agenda and May 22, 2013 Meeting Minutes
1:15 p.m. Public Comment Period
1:30 p.m. Old Business
- Written Reports
- Report from Nominating Committee (Section V.F of the Bylaws)

1:45 p.m. New Business
- Election of Officers for Fiscal Year 2014
- Other Items

2:00 p.m. Update from DDFO, Lee Bishop
- Update from DOE
- Report on NNMCAB Recommendations and DOE Responses
- Other Items

2:30 p.m. Break
2:45 p.m. Regional Monitoring and the Consent Order, TBA
3:30 p.m. Presentation on Community Survey Results on Environment, Kurt Steinhaus
4:00 p.m. Update from Liaison Members
- Los Alamos National Laboratory, Jeffrey Mousseau
- New Mexico Environment Department, John Kieling
- Environmental Protection Agency (Region 6), Lee Bishop for Rich Mayer
- DOE, Peter Maggiore

5:00 p.m. Dinner Break
6:00 p.m. Public Comment Period, Carlos Valdez
6:15 p.m. Consideration and Action on Draft Recommendation(s) to DOE
6:45 p.m. Wrap-Up and Comments from Board Members, Carlos Valdez
7:00 p.m. Adjourn, Lee Bishop

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC on June 20, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–15256 Filed 6–25–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP13–492–000 and PF12–17–000]

Pacific Connector Gas Pipeline, LP; Notice of Application

Take notice that on June 6, 2013, Pacific Connector Gas Pipeline, LP (Pacific Connector), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP13–492–000 an application under section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, seeking a certificate of public convenience and necessity: (i) Authorizing the construction and operation of the Pacific Connector Gas Pipeline (Pacific Connector Pipeline); (ii) approving the Pacific Connector Pipeline's pro forma Tariff; (iii) approving the initial rates for the Pacific Connector Pipeline; and iv) approving its proposed treatment of accounting issues. Pacific Connector also seeks issuance of blanket certificates under Part 157, Subpart F and under Part 284, Subpart G of the Commission's regulations, authorizing Pacific Connector to engage in certain self-implementing routine construction activities, and to transport natural gas on an open access and self-implementing basis, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Pacific Connector Pipeline would be capable of delivering up to 1,060,000 Dekatherms per day of natural gas to the Jordan Cove LNG Export Terminal being developed by Jordan Cove Energy Project, L.P. that separately filed an application with the Commission for its proposal in Docket No. CP13–483–000 on May 21, 2013. Questions regarding this application should be directed to Pam Barnes, Project Manager—Certificates, 295 Chipeta Way, Salt Lake City, Utah 84108, or by telephone at 801–584–6857.

On June 8, 2012, the Commission staff granted Jordan Cove's request to utilize the Pre-Filing Process and assigned Docket No. PF12–17 to staff activities involved with Pacific Connector's project. Now, as of the filing of the application on June 6, 2013, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–492–000, as noted in the caption of this Notice.

Because the Pacific Connector Pipeline is a necessary part of the Jordan Cove LNG Export Terminal, the Commission will prepare a single Environmental Impact Statement (EIS) addressing both projects in order to comply with the National Environmental Policy Act (NEPA) of 1969. Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, and to ensure compliance with the NEPA, 42 U.S.C. 4321–4347, the Commission staff will issue a Notice of Schedule for Environmental Review within 90 days of the date of this Notice. The Notice of Schedule for Environmental Review will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final EIS for the proposal. The Notice will also alert other agencies of the requirement to complete necessary reviews and

authorizations within 90 days of the date of issuance of the Commission staff's final EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on July 10, 2013

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15187 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2484–018]

Gresham Municipal Utilities; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2484–018.

c. *Date filed:* June 10, 2013.

d. *Applicant:* Gresham Municipal Utilities.

e. *Name of Project:* Upper Red Lake Dam Hydroelectric Project.

f. *Location:* On Red River in Shawano County, Wisconsin. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gresham Municipal Utilities, Village of Gresham, Wisconsin, Attn: Art Bahr, Village Administrator, 1126 Main Street, PO Box 50, Gresham, WI 54128.

i. *FERC Contact:* Lesley Kordella, (202) 502–6406 or *lesley.kordella@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* August 9, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The Upper Red Lake Dam Hydroelectric Project would consist of the following existing features: (1) A 42-foot-long concrete dam with a gated spillway section, a concrete overflow section, and a concrete non-overflow section; (2) two short earth embankments on either side of the concrete dam; (3) a 239-acre reservoir; (4) a penstock-and-surge-tank arrangement that delivers flow to the powerhouse; and (5) a 61.5-foot-long by 53-foot-wide concrete and brick powerhouse with one 275-kW turbine-generator unit and one 175-kW turbine-generator united having a total installed capacity of 450 kW; (6) a substation with three 333-kVA transformers; and (7) appurtenant facilities. The project is estimated to generate about 1.9 gigawatt hours annually. No new facilities or environmental measures are proposed.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according

to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (e.g., if scoping is waived, the schedule would be shortened).

Issue Deficiency and/or Additional Information Request, August 2013
Issue Notice of Acceptance, October 2013
Issue Scoping Document, February 2014
Issue Notice of Ready for Environmental Analysis, February 2014
Commission issues EA, June 2014

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15183 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2464–015]

Gresham Municipal Utilities; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2464–015.

c. *Date filed:* June 10, 2013.

d. *Applicant:* Gresham Municipal Utilities.

e. *Name of Project:* Weed Dam Hydroelectric Project.

f. *Location:* On Red River in Shawano County, Wisconsin. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gresham Municipal Utilities, Village of Gresham, Wisconsin, Attn: Art Bahr, Village Administrator, 1126 Main Street, PO Box 50, Gresham, WI 54128.

i. *FERC Contact:* Lesley Kordella, (202) 502–6406 or *lesley.kordella@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: August 9, 2013.

All documents may be filed electronically via the Internet. See 18 CFR § 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The Weed Dam Hydroelectric Project would consist of the following existing features: (1) A gated 64-foot-long concrete spillway with four bays, each containing a five-foot-high tainter gate; (2) two 700-foot-long earth embankments on either side of the spillway; (3) a 244-acre reservoir with a storage capacity of 1,200 acre-feet; (4) two buried steel penstocks; and (5) a concrete powerhouse with one 500-kW turbine-generator unit and one 120-kW turbine-generator united having a total installed capacity of 620 kW; (6) a 100-foot-long transmission line; (7) a substation; and (8) appurtenant facilities. The project is estimated to generate about 1.49 gigawatt hours annually. No new facilities or environmental measures are proposed.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (e.g., if scoping is waived, the schedule would be shortened).

Issue Deficiency and/or Additional Information Request, August 2013
Issue Notice of Acceptance, October 2013
Issue Scoping Document, February 2014
Issue Notice of Ready for Environmental Analysis, February 2014
Commission issues EA, June 2014

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15182 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4093–031]

PK Ventures, Inc.; North Carolina; Notice Soliciting Applications

On April 30, 2010, PK Ventures, Inc. (licensee) filed a Notice of Intent (NOI) to file an application for a subsequent license for its Bynum Hydroelectric Project, No. 4093, pursuant to section 16.19(b) of the Commission's regulations.[1] On June 30, 2010, Commission staff noticed the NOI and approved the use of the traditional licensing process (TLP) to develop the license application. The existing license for Project No. 4093 expires on April 30, 2015.

The 600-kilowatt (kW) Bynum project is located on the Haw River, in Chatham County, North Carolina. No federal lands are affected.

The principal project works consist of: (1) A 750-foot-long, 10-foot-high

[1] 18 CFR 16.19(b)(3) (2012).

stone masonry dam with an uncontrolled spillway and a 150-foot-long non-overflow section; (2) a 2000-foot-long canal, between 25 and 40 feet wide; (3) a powerhouse separate from the dam containing a 600-kW generating unit; (4) a reservoir with a surface area of 20 acres at normal pool elevation of 315 feet mean sea level and a gross storage capacity of 100 acre-feet; and (5) appurtenant facilities. The project operates run-of-river and generates and estimated average of 2,461,000 kW hours a year.

Pursuant to section 16.20(c) of the Commission's regulations, an existing licensee with a minor license not subject to sections 14 and 15 of the Federal Power Act must file an application for a subsequent license at least 24 months prior to the expiration of the current license.[2] PK Ventures has not filed an application for a subsequent license for the Bynum project.

Pursuant to section 16.24(b)(2) of the Commission's regulations, an existing licensee that fails to file a license application pursuant to section 16.20(b) shall be deemed to have filed a notice of intent indicating that it does not intend to file an application for subsequent license. Therefore, pursuant to section 16.25 of the Commission's regulations, interested parties have 90 days from the date of this notice to file a NOI to file an application for a subsequent license. An application for subsequent license or exemption for the Bynum Project (No. 4093) must be filed within 18 months of the date of filing the NOI. The existing licensee is prohibited from filing an application either individually or in combination with other entities.[3]

Questions concerning this notice should be directed to Sean Murphy at (202) 502–6145 or *sean.murphy@ferc.gov*.

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15184 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

[2] 18 CFR 16.20(c) (2012).

[3] 18 CFR 16.24(b)(2) (2012)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–491–000]

Northern Natural Gas Company; Southern Natural Gas Company, L.L.C.; Florida Gas Transmission Company, LLC; Notice of Application

Take notice that on June 4, 2013, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124; on behalf of itself, Southern Natural Gas Company, L.L.C., and Florida Gas Transmission Company, LLC, (collectively, Applicants) filed an application: under section 7(b) of the Natural Gas Act to abandon in-place the Matagorda Offshore Pipeline System, located on shore and in federal and state waters offshore Texas, all as more fully set forth in the joint application which is on file with the Commission and open to public inspection. Applicants also request Commission approval to abandon the services provided with respect to receipt points located on the facilities proposed for abandonment. This filing may also be viewed on the Commission's Web site at *http://wnn.ferc.gov* using the ''eLibrary'' link, select ''Docket #'' and follow the instructions (call 202–502–8222 or for TTY, 202–502–8659).

Any questions regarding the joint application should be directed to: Michael T. Loeffler, Senior Director, Certificates and External Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124 by phone (402) 398–7103.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 10, 2013.

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15186 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1700–000]

KASS Commodities; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of KASS Commodities' application for market-based rate authority, with an accompanying rate schedule, noting that

such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is July 9, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15189 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1698–000]

Kiwi Energy NY LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 19, 2013.

This is a supplemental notice in the above-referenced proceeding, of Kiwi Energy NY LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is July 9, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15190 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1697–000]

Kiwi Energy Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Kiwi Energy Inc.'s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is July 9, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by

clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15188 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2880–011]

Broad River Electric Cooperative and Cherokee Falls Associates; Aquenergy Systems, Inc.; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On June 18, 2013, Broad River Electric Cooperative and Cherokee Falls Associates (transferors) and Aquenergy Systems, Inc. (transferee) filed an application for transfer of license for the Cherokee Falls Project, FERC No. 2880, located on the Broad River in Cherokee County, South Carolina.

Applicants seek Commission approval to transfer the license for the Cherokee Falls Project from transferor to transferee.

Applicants' Contact: Transferor: Mr. Douglass E. Wilson, President & Chief Executive Officer, Broad River Electric Cooperative, Inc., P.O. Box 2269, 811 Hamrick Street, Gaffney, SC 29342, telephone (864) 489–5737 and Mr. Charles R. Zappala, Shareholder, Cherokee Falls Associates, 625 Liberty Ave., Suite 3100, Pittsburgh, PA 15222. Transferee: Mr. Steve Champagne, Executive Vice President and General Counsel, Aquenergy Systems, Inc., c/o Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810.

FERC Contact: Patricia W. Gillis (202) 502–8735.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2880) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15191 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Reliability Technical Conference Agenda

Reliability Technical Conference	Docket No. AD13–6–000
North American Electric Reliability Corporation	Docket No. RC11–6–004
North American Electric Reliability Corporation	Docket No. RR13–2–000
	Not consolidated.

As announced in the Notice of Technical Conference issued on May 7, 2013, the Commission will hold a technical conference on Tuesday, July 9, 2013 from 8:45 a.m. to 5:00 p.m. to discuss policy issues related to the reliability of the Bulk-Power System. The agenda for this conference is attached. Commission members will participate in this conference.

After the close of the conference, the Commission will accept written comments regarding the matters discussed at the technical conference. Any person or entity wishing to submit written comments regarding the matters discussed at the conference should submit such comments in Docket No. AD13–6–000, on or before August 8, 2013.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, *www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). A free webcast of this event is also available through *www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

Reliability Technical Conference
Commissioner-Led Reliability Technical Conference
July 9, 2013,
8:45 a.m.–5:00 p.m.

8:45 a.m. Commissioners' Opening Remarks

9:00 a.m. Introductions—Commissioner Cheryl LaFleur, Conference Chair

9:15 a.m. Panel I: State of Reliability and Emerging Issues

Presentations: Panelists will be asked to address the state of reliability, including NERC's May 2013 State of Reliability Report and its findings with respect to the adequacy of Bulk-Power System reliability. In addition, panelists will be invited to address related issues that have affected or are expected to affect the state of reliability going forward. Specifically, panelists will be asked to address some or all of the following:

a. What does the 2013 State of Reliability Report show about the state of reliability? What metrics are most useful for measuring reliability? Has NERC developed new or improved metrics over time? How do the results in the 2013 Report compare to the results in the 2012 Report? How have NERC and the industry implemented recommendations from the 2012 Report? What have been the lessons learned in implementing last year's recommendations?

b. What are the most critical issues affecting the state of reliability today and what should NERC, the industry, and the Commission do to address them? What trends have been identified with respect to bulk electric system events that resulted in load loss, *e.g.,* protection system misoperations or equipment failures, and how can the frequency of such events be reduced? How have NERC's event analysis reports, lessons learned, and related documents contributed to industry's understanding of common causes and solutions to prevent similar events from occurring?

c. Panelists will be asked to identify emerging issues that will impact reliability, including cybersecurity and high impact low frequency issues. This topic should not include issues covered by other panels of this conference, but should address emerging issues and the biggest challenges to addressing those issues. What long-term objectives should NERC be pursuing, *i.e.,* over the next five to ten years, both internally, with respect to its own processes, and externally, with respect to reliability objectives?

Panelists:

1. Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corp. (NERC)
2. Tom Burgess, Vice President and Director of Reliability Assessment and Performance Analysis, NERC
3. Kevin Burke, Chairman, President and CEO, Consolidated Edison Inc., on behalf of Edison Electric Institute (EEI)
4. Allen Mosher, Vice President, Policy Analysis and Reliability Standards, American Public Power Association
5. The Honorable Todd Snitchler, Chairman, Public Utilities Commission of Ohio, on behalf of National Association of Regulatory Utility Commissioners
6. Peter Fraser, Managing Director, Regulatory Policy, Ontario Energy Board

11:15 a.m. Break

11:30 a.m. Panel II: Continuing Evolution of NERC Enforcement and Compliance Activities

Presentations: NERC will be invited to provide an update on its efforts to streamline its compliance and enforcement processes. Panelists will be invited to express their views on NERC's progress in these areas as well as recommendations moving forward. Specifically, NERC and panelists will be asked to address some or all of the following:

a. What are the trends in compliance and enforcement of Reliability Standards Requirements? Which are the Reliability Standards Requirements most violated? In what way has implementation of the Find, Fix, Track, and Report program enhanced reliability?

b. What is the status of the NERC Reliability Assurance Initiative (RAI) program? What progress has been made in developing criteria for evaluating internal controls and risk assessments? How do NERC and the Regional Entities plan to implement RAI? How will NERC ensure consistency among the regions?

Panelists:

1. Mark Rossi, Senior Vice President and Chief Operating Officer, NERC [1]
2. Joseph T. Kelliher, Executive Vice President for Federal Regulatory Affairs, NextEra Energy, Inc., on behalf of EEI
3. Barry Lawson, Associate Director, Power Delivery and Reliability Government Relations, National Rural Electric Cooperative Association
4. William J. Gallagher, Special Projects Chief, Vermont Public Power Supply Authority, on behalf of Transmission Access Policy Study Group
5. Stacy Dochoda, President and CEO, Florida Reliability Coordinating Council and 2013 Chair Regional Entity Management Group

12:45 p.m. Lunch

1:30 p.m. Panel III: NERC Standards Development Process and Priorities

Presentations: Panelists will be asked to address NERC's standards development process, the status of that process, and various initiatives to improve the timeliness, substance, and prioritization of issues. Panelists may suggest improvements in both the process and overall approach to standards development. NERC and panelists will be asked to address some or all of the following:

a. What is the status of NERC's efforts to improve NERC's standards development process, including the quality and timeliness of standards? What are the primary deficiencies in the current standards development process and how are they being addressed? Are there changes in the Commission's processes that the Commission should consider?

b. Please provide an update on the role of various initiatives to improve the standards development process and priorities (*e.g.,* Reliability Issues Steering Committee, Standards Oversight Project Group, and ''P 81'' efforts). How are they working and is there room for further improvement.

c. What is the status and progress of NERC's Cost Effective Analysis Process in introducing cost considerations and effectiveness into the development of new and revised standards?

d. What can the North American Transmission Forum do to inform the standards development process? What is the role of the North American Transmission Forum in identifying and communicating lessons learned to NERC, the Commission, and industry?

Panelists:

1. Mark Lauby, Vice President and Director of Standards, NERC
2. Jeffery J. Gust, Vice President, Compliance and Standards, MidAmerican Energy Company, on behalf of EEI
3. John A. Anderson, President & CEO, Electricity Consumers Resource Council
4. Brian Murphy, Chair of NERC Standards Committee; Manager, NERC Reliability Standards, NextEra Energy, Inc
5. Christine Schwab, Chair of NERC Reliability Issues Steering Committee; Vice President and Chief Compliance and Risk Officer, Dominion Resources Services
6. Thomas J. Galloway, President and Chief Executive Officer, North American Transmission Forum

2:45 p.m. Break

3:00 p.m. Panel IV: Other Issues

Presentations: Panelists will be asked to address the following issues:

[1] Gerry Cauley, President and Chief Executive Officer of NERC, may also participate in the panel discussions for Panels II, III, and IV, but will not present any formal remarks on behalf of NERC.

a. What approaches are being taken by the industry, ISOs, and other system planners to address the continued changes in projected resource mix resulting from Environmental Protection Agency rules and, among other things, recent trends in natural gas prices? How are regulators, system planners, and industry participants identifying and responding to potential changes in the generation resource mix or in capacity reserve levels due to retirement of aging or other non-economically viable plants? Which regions are expected to be most affected by retirement of coal plants or other changes in resource mix, and how are those regions responding? How are regions accommodating outages necessitated by generator retrofits?

b. What is the status of implementation (in the Western Electricity Coordinating Council Region and in the other regions) of the recommendations made or lessons learned in the September 8, 2011 Southwest blackout and from the February 2011 cold weather outages? The purpose of this panel is not to discuss any ongoing investigation but to address what steps are being taken to ensure that the lessons learned are being implemented and are not lost over time. Also, what have been the primary obstacles in implementing the changes recommended in the NERC/FERC blackout reports issued in response to these outages?

Panelists:

1. David Souder, Director Operations Planning, PJM Interconnection

2. John Lawhorn, Senior Director, Policy and Economic Study, Midcontinent Independent System Operator, Inc.

3. Jeff Burleson, Vice President, System Planning, Southern Company

4. Joel Beauvais, Associate Assistant Administrator, Office of Air and Radiation, Environmental Protection Agency

5. Melanie M. Frye, Vice President, Operations and Planning, Western Electric Coordinating Council

6. Michael Moon, Senior Director of Reliability Risk Management, NERC

4:30 p.m. Commissioner Closing Remarks

[FR Doc. 2013–15185 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14527–000]

Kings River Conservation District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On June 3, 2013, the Kings River Conservation District filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Gould Weir Hydroelectric Project, to be located on the Kings River, near the city of Sanger, in Fresno County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The applicant is considering two alternatives for this proposed project. The first option would include the installation of facilities immediately downstream of the existing Gould weir. The second option would include the installation of facilities in a bypass channel adjacent to Gould weir. Based on a reconnaissance-level study of the site performed in 2002, the project could have an installed capacity of 0.96 megawatt and an estimated average annual generation of 4.4 gigawatt-hours utilizing one Kaplan-bulb turbine. A preliminary design of the facilities and selection of the turbine and generator would be performed during the feasibility study.

Applicant Contact: Mr. David Orth, 4886 East Jensen Avenue, Fresno, CA 93725, phone (559) 237–5567, extension 101.

FERC Contact: Corey Vezina, (202) 502–8598 or *Corey.vezina@ferc.gov*.

Competing Application: This application competes with Project No. 14497–000 filed February 11, 2013. Competing applications had to be filed on or before June 3, 2013.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14527) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15192 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following joint stakeholder meeting related to the transmission planning activities of PJM Interconnection, L.L.C., ISO New England, Inc., and New York Independent System Operator, Inc.:

Inter-Regional Planning Stakeholder Advisory Committee—New York/New England

June 20, 2013, 8:30 a.m.–9:30 a.m., Local Time

The above-referenced meeting will be held over conference call.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.pjm.com/committees-and-groups/stakeholder-meetings/stakeholder-groups/ipsac-ny-ne.aspx*.

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*
Docket No. ER13–102, *New York Independent System Operator, Inc.*
Docket No. ER13–193, *ISO New England Inc.*
Docket No. ER13–195, *Indicated PJM Transmission Owners*
Docket No. ER13–196, *ISO New England Inc.*
Docket No. ER13–198, *PJM Interconnection, L.L.C.*
Docket No. ER13–1052, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–1054, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: June 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–15181 Filed 6–25–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0685; FRL–9533–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 26, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0685, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 *FR* 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0685, which is available for either public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (Renewal).

ICR Numbers: EPA ICR Number 1927.06, OMB Control Number 2060–0451.

ICR Status: This ICR is scheduled to expire on June 30, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the Emission Guidelines at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart DDDD. Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Respondents/Affected Entities: Commercial and industrial solid waste incineration units.

Estimated Number of Respondents: 90.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 18,061. ''Burden'' is defined at 5 CFR 1320.3(b).

Estimated Total Annual Cost: $2,892,789, which includes $1,748,799 in labor costs, no capital/startup costs, and $1,143,990 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a change in the total estimated respondent and Agency burden and cost as currently identified in the OMB Inventory of Approved Burdens due to several reasons: (1) The previous ICR included contractor labor costs associated with annual stack testing and continuous parameter monitoring as a respondent burden. Since the contractor labor costs apply solely to O&M activities, we have revised the ICR to reflect these as O&M costs, resulting in an apparent decrease in the total

respondent labor burden; (2) this ICR revises the number of respondents based on more recent information obtained from a 2011 Regulatory Impact Analysis (RIA) conducted by EPA. The previous ICR estimated 97 existing sources were subject to the standard; however, the RIA indicates there are approximately 90 existing sources. This ICR reflects the most recent information obtained from the 2011 RIA, and contributes to the apparent decrease in the respondent and Agency labor burdens; and (3) there is a slight increase in Agency burden costs from the most-recently approved ICR due to the use of updated labor rates, because this ICR references labor rates from the Bureau of Labor Statistics to calculate respondent burden costs and references labor rates from OPM to calculate Agency burden costs.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2013–15180 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0152; FRL–9390–8]

Registration Review; Draft Human Health and Ecological Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and ecological risk assessments for the registration review of acetaminophen, clofentezine, fluazinam, hexythiazox, quinclorac, sulfur, and triflumizole and opens a public comment period on these documents. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft risk assessments for each of the subject chemicals and is making them available for public comment. After reviewing comments received during the public comment period, EPA will issue revised risk assessments, if appropriate, explain any changes to the draft risk assessments, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for each of the chemicals. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before August 26, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number for the specific pesticide of interest provided in Table 1. in Unit III., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For information about a particular pesticide included in this document, contact:* The Chemical Review Manager identified in Table 1. in Unit III. for the pesticide of interest.

For general questions on the registration review program, contact: Jane Robbins, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; fax number: (703) 305–8005; email address: *robbins.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in Table 1. in Unit III. for the pesticide of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice

issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the procedural regulations for registration review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for acetaminophen, clofentezine, fluazinam, hexythiazox, quinclorac, sulfur, and triflumizole to ensure that they continue to satisfy the FIFRA standard for registration—that is, that these pesticides can still be used without unreasonable adverse effects on human health or the environment.

At this stage in the registration review process, consistent with the final paper, announced in the **Federal Register** issue of March 27, 2013 (78 FR 18585) (FRL–9382–5), jointly developed with the U.S. Department of Agriculture (USDA), the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service (''the Services'') to enhance opportunities for stakeholder input during pesticide registration reviews and endangered species consultations, draft environmental risk assessments include an evaluation of the potential risks to federally listed endangered and threatened species (hereafter referred to as ''listed species''). EPA intends to complete a refined assessment of potential risks to individual listed species, as needed. The refined listed species assessments will be based on the recommendations of the National Research Council (NRC), which was tasked with providing advice on ecological risk assessment tools and scientific approaches in developing listed species risk assessments that are compliant with both FIFRA and the Endangered Species Act (ESA). The NRC report, issued April 30, 2013, provides recommendations to ensure scientific soundness and maximize the utility of risk assessment refinements for listed species. Additional information can be found at the following Web site: *http://www8.nationalacademies.org/cp/projectview.aspx?key=49396.* Revisions to risk assessments will likely reflect Agency review of the report and any associated methodology and science policy based on the report's recommendations. Refinements to the listed species assessments may include, but not be limited to, the following:

- More detailed, species-specific ecological and biological data.
- More detailed and accurate information on chemical use patterns.
- Sub-county level spatial proximity data depicting the co-occurrence of potential effects areas and listed species and any designated critical habitat.

In the event that a draft risk assessment shows risks of concern to human health or the environment for a specific chemical, EPA reserves the right to initiate mitigation at this stage of registration review. This effort to mitigate a chemical's risks early in the registration review process is consistent with the Agency's approach for registration review. Where risks are identified early in the registration review process and opportunities for early mitigation exist, the Agency may pursue those opportunities as they arise, rather then waiting for completion of a chemical's registration review in order to mitigate risks. The public comment period for the draft risk assessments allows members of the public to provide comments and suggestions for revising the draft risk assessments and for reducing risks.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and ecological risk assessments for acetaminophen, clofentezine, fluazinam, hexythiazox, quinclorac, sulfur, and triflumizole. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied in these draft risk assessments. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft human health and ecological risk assessments. EPA will then issue revised risk assessments, if appropriate, explain any changes to the draft risk assessment, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessments, if the revised risk assessments indicate risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risks identified in those revised risk assessments before developing proposed registration review decisions on acetaminophen, clofentezine, fluazinam, hexythiazox, quinclorac, sulfur, and triflumizole. At present, EPA is releasing registration review draft risk assessments for the pesticide cases identified in the following table and further described in this unit.

TABLE 1—REGISTRATION REVIEW DRAFT RISK ASSESSMENTS

Registration review case name and No.	Pesticide docket identification (ID) No.	Chemical review manager, telephone number, and email address
Acetaminophen, Case No. 7610	EPA–HQ–OPP–2012–0145	Bonnie Adler, (703) 308–8523, *adler.bonnie@epa.gov.*
Clofentezine, Case No. 7602	EPA–HQ–OPP–2006–0240	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov.*
Fluazinam, Case No. 7013	EPA–HQ–OPP–2009–0039	Steven Snyderman, (703) 347–0249, *snyderman.steven@epa.gov.*
Hexythiazox, Case No. 7404	EPA–HQ–OPP–2006–0114	Molly Clayton, (703) 603–0522, *clayton.molly@epa.gov.*
Quinclorac, Case No. 7222	EPA–HQ–OPP–2007–1135	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov.*
Sulfur, Case No. 0031	EPA–HQ–OPP–2008–0176	Jose Gayoso, (703) 347–8652, *gayoso.jose@epa.gov.*

TABLE 1—REGISTRATION REVIEW DRAFT RISK ASSESSMENTS—Continued

Registration review case name and No.	Pesticide docket identification (ID) No.	Chemical review manager, telephone number, and email address
Triflumizole, Case No. 7003	EPA–HQ–OPP–2006–0115	Steven Snyderman, (703) 347–0249, *snyderman.steven@epa.gov.*

• *Acetaminophen.* The registration review docket for acetaminophen (EPA–HQ–OPP–2012–0145) opened in the **Federal Register** issue of March 28, 2012 (77 FR 18810) (FRL–9342–1). Acetaminophen (also known by the brand name Tylenol) is registered for use as a vertebrate pesticide to control the invasive brown tree snake in Guam. The snakes ingest baited mice, which are lethal to the snake. One FIFRA section 3 product is registered, and two FIFRA section 18 registrations are held by USDA Animal Plant Health Inspection Service. The Agency has conducted a quantitative ecological risk and endangered species assessment for acetaminophen based on the available information and on the limited use of this pesticide active ingredient. There was no need for a human health risk assessment due to acetaminophen's well-studied pharmaceutical use and extremely limited opportunities for exposure from its pesticidal use on Guam. In addition, EPA has determined that no new data are needed to support the registration review decision for acetaminophen.

• *Clofentezine.* The registration review docket for clofentezine (EPA–HQ–OPP–2006–0240) opened in the **Federal Register** issue of March 28, 2007 (72 FR 14548) (FRL–8118–3). Clofentezine is an acaricide that is currently registered as a liquid formulation for use on almonds, apples, apricots, cherries, Christmas trees, grapes, nectarines, ornamentals (greenhouse and outdoor), peaches, pears, persimmons, and walnuts. There are currently no residential uses associated with clofentezine. The Agency has conducted a human health risk assessment for both dietary (food and drinking water) and occupational exposure pathways. The Agency has also conducted a quantitative ecological risk assessment, which includes a screening-level listed species assessment. EPA acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on specific areas that will reduce the uncertainties associated with the characterization of risk to listed species identified in the current assessment.

• *Fluazinam.* The registration review docket for fluazinam (EPA–HQ–OPP–2009–0039) opened in the **Federal Register** issue of September 23, 2009 (74 FR 48559) (FRL–8434–6). Fluazinam is a pyridine fungicide registered for agricultural use on a variety of crops, including but not limited to melons, peanuts, peppers/eggplants, potatoes, and soybeans. Fluazinam is also registered for non-agricultural use on golf course turf. The Agency has conducted a human health risk assessment for dietary (food and drinking water), residential and occupational exposure pathways. An addendum to the most recent human health risk assessment was completed to incorporate information received shortly after the completion of the risk assessment. The addendum and risk assessment are available in the registration review docket. The Agency has also conducted a quantitative ecological risk assessment, which includes a screening-level listed species assessment. EPA acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on specific areas that will reduce the uncertainties associated with the characterization of risk to listed species identified in the current assessment.

• *Hexythiazox.* The registration review docket for hexythiazox (EPA–HQ–OPP–2006–0114) opened in the **Federal Register** issue of February 2, 2007 (72 FR 5050) (FRL–8113–1). Hexythiazox is an acaricide that acts primarily as a mite growth inhibitor/ovicide and is used to control mites. It is registered for use on a variety of agricultural crops, turf, and various residential plants. The Agency has conducted a human health risk assessment for dietary (food and drinking water), residential, and occupational exposure pathways. The Agency has conducted a quantitative ecological risk assessment, which includes a screening-level listed species assessment. EPA acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on specific areas that will reduce the uncertainties associated with the characterization of risk to listed species identified in the current assessment.

• *Quinclorac.* The registration review docket for quinclorac (EPA–HQ–OPP–2007–1135) opened in the **Federal Register** issue of December 19, 2007 (72 FR 71893) (FRL–8342–9). Quinclorac is an herbicide for the selective post-emergent control of various annual grasses and broadleaf weeds. The variety of end-use products containing quinclorac are currently registered on rice, sorghum, and wheat. Additionally, quinclorac is registered for use by commercial applicators and homeowners on lawns, parks, in and around ornamentals, and golf courses. The Agency has conducted a human health risk assessment for dietary (food and drinking water), residential, and occupational exposure pathways in support of registration review, and for new proposed use on rhubarb, and low growing berry (except for strawberry), subgroup 13–07H. The Agency has conducted a quantitative ecological risk assessment, which includes a screening-level listed species assessment. EPA acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on specific areas that will reduce the uncertainties associated with the characterization of risk to listed species identified in the current assessment.

• *Sulfur.* The registration review docket for sulfur (EPA–HQ–OPP–2008–0176) opened in the **Federal Register** issue of March 26, 2008 (73 FR 16011) (FRL–8356–4). Elemental sulfur is a naturally occurring component of the earth's core and crust and is ubiquitous in the environment. Sulfur has been used as a pesticide in the United States since the 1920s, and is currently registered for use as an insecticide and fungicide on a wide range of field and greenhouse-grown food and feed crops, livestock (and livestock quarters), and indoor and outdoor residential sites. Use sites include berries, field crops, ornamentals, pets (dogs), root crops, tree fruit, vegetables, and turf (including residential lawns and golf courses). Sulfur is also registered for use in gas cartridge products, which are used for vertebrate pest control in a variety of sites. The Agency has conducted a qualitative human health risk assessment. The Agency has also conducted a quantitative ecological risk assessment, which includes a screening-level listed species assessment. EPA

acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on specific areas that will reduce the uncertainties associated with the characterization of risk to listed species identified in the current assessment. The human health risk assessment includes all uses of sulfur, including gas cartridges. The most recent ecological risk assessment includes all uses except gas cartridges. A separate ecological risk assessment for gas cartridge uses was conducted in 2010 and can be found in the sulfur registration review docket.

• *Triflumizole.* The registration review docket for triflumizole (EPA–HQ–OPP–2006–0115) opened in the **Federal Register** issue of March 28, 2007 (72 FR 14548) (FRL–8118–3). Triflumizole is a broad spectrum, imidazole fungicide (group 3) that inhibits ergosterol biosynthesis in fungi. It is registered for use on a variety of agricultural crops, ornamentals in greenhouses/shade houses, interior scapes, and Christmas trees/conifers on nurseries and plantations. It is also registered for use as a pre-plant pineapple seed treatment. The Agency has conducted a human health risk assessment for dietary (food and drinking water), residential and occupational exposure pathways. The Agency has also conducted a quantitative ecological risk assessment, which includes a screening-level listed species assessment. EPA acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on specific areas that will reduce the uncertainties associated with the characterization of risk to listed species identified in the current assessment.

1. *Other related information.* Additional information on these pesticides is available on the chemical pages for these pesticides in Chemical Search, *http://www.epa.gov/pesticides/chemicalsearch,* and in each chemical's individual docket listed in Table 1. in Unit III. Information on the Agency's registration review program and its implementing regulation is available at *http://www.epa.gov/oppsrrd1/registration_review.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Acetaminophen, Clofentezine, Fluazinam, Hexythiazox, Pesticides and pests, Quinclorac, Sulfur, Triflumizole.

Dated: June 19, 2013.

Michael Goodis,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–15304 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9827–4]

Integrated Science Assessment for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of a final document titled, ''Integrated Science Assessment for Lead'' (EPA/600/R–10/075F). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for lead (Pb).

DATES: The document will be available on or around June 26, 2013.

ADDRESSES: The ''Integrated Science Assessment for Lead'' will be made available primarily through the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request either of these, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Lead'' (EPA/600/R–10/075F) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Ellen Kirrane, NCEA; telephone: 919–541–1340; facsimile: 919–541–2985; or email: *Kirrane.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 108 (a) of the Clean Air Act directs the Administrator to identify certain pollutants, which among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . . .'' Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109 (d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

Pb is one of six ''criteria'' pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA provides a concise review, synthesis, and evaluation of the most policy-relevant science to serve as a scientific foundation for the review of the NAAQS. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose review and advisory functions are mandated by Section 109

(d) (2) of the Clean Air Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On February 26, 2010 (75 FR 8934), EPA formally initiated its current review of the air quality criteria for Pb, requesting the submission of recent scientific information on specified topics. Soon after, a science policy workshop was held to identify key policy issues and questions to frame the review of the Pb NAAQS (75 FR 20843). Drawing from the workshop discussions, a draft of EPA's ''Integrated Review Plan for the National Ambient Air Quality Standards for Lead'' (EPA/452/D–11/001) was developed and made available in March 2011 for public comment and was discussed by the CASAC Pb Review Panel (CASAC panel) via a publicly accessible teleconference consultation on May 5, 2011 (76 FR 20347, 76 FR 21346). The final Integrated Review Plan was released in December 2011 (76 FR 76972) and is available at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_2010_pd.html.*

As part of the science assessment phase of the review, EPA held a workshop in December 2010 to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA (75 FR 69078). The first external review draft ISA for Pb was released on May 6, 2011 (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=226323*). The CASAC panel met at a public meeting on July 20, 2011, to review the draft ISA (76 FR 36120). Subsequently, on December 9, 2011, the CASAC provided a consensus letter for their review to the Administrator of the EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/D3E2E8488025344D852579610068A8A1/$File/EPA-CASAC-12-002-unsigned.pdf*). The second external review draft ISA for Pb was released on February 2, 2012 (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=235331*). The CASAC panel met at a public meeting on April 10, 2012, to review the draft ISA (77 FR 14783). Subsequently, on July 20, 2012, the CASAC provided a consensus letter for their review to the Administrator of the EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/13B1FD83815FA11885257A410064E0DC/$File/EPA-CASAC-12-005-unsigned.pdf*). The third external review draft ISA for Pb was released on November 27, 2012 (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=242655*). The CASAC panel met at a public meeting on February 5, 2013, to review the draft ISA (78 FR 938). Subsequently, on June 4, 2013, the CASAC provided a consensus letter for their review to the Administrator of the EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/0/39A3C8177D869EA085257B80006C7684/$File/EPA-CASAC-13-004+unsigned.pdf*). The letters from CASAC, as well as public comments received on the ISA drafts can be found in Docket ID No. EPA–HQ–ORD–2011–0051.

EPA has considered comments by the CASAC panel and by the public in preparing this final ISA.

Dated: June 18, 2013.

Abdel M. Kadry,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2013–15144 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0380; FRL–9388–4]

Pesticide Maintenance Fee: Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 23, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0380, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Michael Yanchulis.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants through Pesticide Maintenance Fee responses to cancel 264 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	EPA company No.	Product name	Chemical name
000100–00701	100	Amber Herbicide	Triasulfuron.
000100–00800	100	Ridomil Gold Bravo	D-Alanine, N-(2,6-dimethylphenyl-N-(methoxyacetyl)-,methyl ester; Chlorothalonil.
000100–00848	100	Zorial Rapid 80 Herbicide	Norflurazon.
000228–00557	228	Atera GC 2+1 Sc Insecticide	Bifenthrin; Imidacloprid.
000239–02683	239	Ortho Home Pest Insect Killer	Bifenthrin.
000264–00378	264	Larvin Brand DF Thiodicarb Insecticide/Ovicide.	Thiodicarb.
000264–00379	264	Larvin Brand 3.2 Thiodicarb Insecticide/Ovicide.	Thiodicarb.
000264–00467	264	Aliette Fungicide	Fosetyl-Al.
000264–00504	264	Aliette Injectable Fungicide	Fosetyl-Al.
000264–00530	264	Larvin Brand DF WSP Thiodicarb Insecticide/Ovicide.	Thiodicarb.
000264–00700	264	Dropp SC Cotton Defoliant	Thidiazuron.
000264–00705	264	Scala 400 SC Fungicide	Pyrimethanil.
000264–00735	264	Sencor 4 Flowable Herbicide	Metribuzin.
000264–00737	264	Bayleton 50% Dry Flowable Fungicide	Triadimefon.
000264–00750	264	Raxil 0.26 FS Seed Treatment Fungicide	Tebuconazole.
000264–00782	264	Encore 190 Insecticide	Imidacloprid.
000264–00928	264	Gustafson Captan 30–DD	Captan.
000264–00931	264	Gustafson Captan 400	Captan.
000264–00939	264	Gustafson RTU-Baytan-Thiram Fungicide	Triadimenol.
000264–00949	264	Vitavax PC Peanut Seed Treatment Fungicide.	Thiram; Carboxin; Pentachloronitrobenzene; Captan.
000264–00961	264	Raxil 0.26FS Seed Treatment Fungicide	Tebuconazole.
000264–00965	264	Busan 30A	2-(Thiocyanomethylthio)benzothiazole.
000264–00966	264	Raxil XT Wettable Powder Fungicide	Tebuconazole; Metalaxyl.
000264–00973	264	Evolve Potato Seed Piece Treatment Fungicide.	Cymoxanil; Thiophanate-methyl; Mancozeb.
000264–00975	264	Protege 70WP Fungicide	Azoxystrobin.
000264–00979	264	Protege-Allegiance WP Fungicide	Azoxystrobin; Metalaxyl.
000264–00982	264	Protege-FL Seed Applied Fungicide	Azoxystrobin.
000264–00990	264	Tops 30 Flowable Fungicide	Thiophanate-methyl.
000264–00991	264	Soygard L with Protege	Azoxystrobin; Metalaxyl.
000264–00999	264	Three Way Peanut Seed Treatment Fungicide.	Metalaxyl; Trufloxystrobin; Captan.
000352–00636	352	DuPont Advion Cockroach Bait Station	Indoxacarb.
000352–00637	352	DuPont Provaunt 1.25SC Insecticide	Indoxacarb.
000352–00646	352	DuPont Advion Ant Bait Station	Indoxacarb.
000352–00770	352	DuPont Aperion ST Insecticide	Indoxacarb.
000400–00469	400	Dimilin 25W Mushrooms	Diflubenzuron.
000400–00559	400	Protector-L	Thiram.
000432–01310	432	Merit 0.62 Granular	Imidacloprid.
000432–01311	432	Merit 2.5 G Greenhouse and Nursery Insecticide.	Imidacloprid.
000432–01473	432	Coretect Turf and Ornamental Insecticide	Imidacloprid.
000464–00661	464	Bioban 2000	2-Methyl-3(2H)-isothiazolone; 5-Chloro-2-methyl-3(2H)-isothiazolone.
000464–00679	464	Tris Nitro Solid	2-(Hydroxymethyl)-2-nitro-1,3-propanediol.
000499–00430	499	Whitmire TC 148A Microencapsulated Concentrate—Contains Nylar.	Pyriproxyfen.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	EPA company No.	Product name	Chemical name
000499–00439	499	Whitmire TC 148B	Pyriproxyfen.
000499–00537	499	TC296	Dinotefuran.
000499–00554	499	TC–329	Dinotefuran.
000524–00538	524	MON 78271 Herbicide	Glycine, N-(phosphonomethyl)-potassium salt.
001448–00017	1448	Busan 11–M1	Barium metaborate.
001448–00023	1448	Busan 90	Ethanone, 2-bromo-1-(4-hydroxyphenyl)-.
001448–00045	1448	Busan 93	2-(Thiocyanomethylthio)benzothiazole; Ethanone, 2-bromo-1-(4-hydroxyphenyl)-.
001448–00075	1448	DCDIC	Carbamodithioic acid, cyano-,disodium salt.
001448–00342	1448	Busan 1130	Ethanone, 2-bromo-1-(4-hydroxyphenyl)-.
001448–00367	1448	Busan 90C	Ethanone, 2-bromo-1-(4-hydroxyphenyl)-.
001448–00386	1448	TCMTB 5WB	2-(Thiocyanomethylthio)benzothiazole.
001529–00033	1529	Nuosept 145 Preservative	Methanol, (((1-methyl-2-(5-methyl-3-oxazolidinyl)ethoxy)methoxy)methoxy)-.
001677–00056	1677	Bar Star Bar Glass Sanitizer	Dodecylbenzenesulfonic acid; Phosphoric acid.
001677–00090	1677	Mandate	Capric acid; Caprylic acid; Citric acid; Phosphoric acid.
001706–00237	1706	SD Algaecide	1-Octanaminium, N,N-dimethyl-N-octyl-, chloride.
002217–00692	2217	Gordon's Professional Turf Products Teremec SP Turf Fungicide.	Chloroneb.
002724–00592	2724	SPI Residual Pressurized Spray II	Pyrethrins; Permethrin; MGK 264.
002724–00642	2724	Speer Flea & Tick Spray IV	Pyrethrins; Permethrin; Piperonyl butoxide.
002724–00648	2724	Speer Neoperm Total Release Indoor Fogger IV.	Tetramethrin; Permethrin; Piperonyl butoxide.
002724–00709	2724	Elite Quick-Kill Spray Concentrate	Pyrethrins; Piperonyl butoxide.
002724–00776	2724	Linalool Mousse	Pyriproxyfen; Prallethrin; MGK 264; Linalool.
005813–00049	5813	Clorox Toilet Bowl Cleanser	Sodium hypochlorite.
005887–00169	5887	Black Leaf Vitamin B1 Solution	1-Naphthaleneacetic acid.
007173–00239	7173	Difethialone Block	Difethialone.
007173–00240	7173	Generation Blue Pellets Bait Packs	Difethialone.
007969–00249	7969	Bas 510 ST Seed Treatment Fungicide	Boscalid.
008622–00043	8622	Metapicrin	Chloropicrin.
009198–00094	9198	The Andersons Tee Time with 0.92% Team	Trifluralin; Benfluralin.
009198–00110	9198	The Andersons Tee Time Insecticide with 6.2% Dylox.	Trichlorfon.
009198–00112	9198	The Andersons 0.5% Bayleton Fungicide	Triadimefon.
009198–00153	9198	Andersons Fertilizer Weed & Feed with 0.92% Atrazine.	Atrazine.
009198–00155	9198	The Andersons Fertilizer with .1875% Dimension & 1.0% Ronstar.	Dithiopyr; Oxadiazon.
009198–00156	9198	The Andersons GC Fertilizer Plus 0.058% Bifenthrin.	Bifenthrin.
009198–00161	9198	The Andersons 0.058% Bifenthrin Insect Control Plus Fertilizer.	Bifenthrin.
009198–00162	9198	The Andersons 0.029% Bifenthrin Insect Control Plus Fertilizer.	Bifenthrin.
009198–00171	9198	Anderson's Fertilizer Plus Preemergent Weed Control.	Pendimethalin.
009198–00174	9198	Anderson's Proturf Fertilizer Plus Weedgrass Control.	Pendimethalin.
009198–00186	9198	St. Augustine Weed Control Plus Fertilizer	Atrazine.
009198–00208	9198	Fertilizer Plus Fungicide XI	Myclobutanil.
009198–00218	9198	The Andersons 0.51% Granule Propiconazole.	Propiconazole.
009198–00220	9198	Andersons Golf Products 30% Etradiazole Turf Fungicide.	Etridiazole.
009198–00221	9198	Andersons Golf Products Truban Fungicide 30% WP.	Etridiazole.
009198–00223	9198	The Andersons Insect Killer Granules with 2.0% Carbaryl.	Carbaryl.
009198–00238	9198	The Andersons 0.058% Bifenthrin + 0.115% Imidacloprid Insecticide with Fertilizer.	Bifenthrin; Imidacloprid.
009198–00240	9198	The Andersons GC 0.077% Bifenthrin + 0.155% Imidacloprid Granular Insecticide.	Bifenthrin; Imidacloprid.
009198–00241	9198	The Andersons GC 0.058% Bifenthrin + 0.115% Imidacloprid Insecticide with Fertilizer.	Bifenthrin; Imidacloprid.
009198–00246	9198	The Andersons 0.39% Trinexapac-Ethyl + Fertilizer.	Trinexapac-ethyl.
009198–00248	9198	The Andersons 0.75% Prodiamine Herbicide	Prodiamine.
009198–00249	9198	The Andersons 0.5% Prodiamine Herbicide	Prodiamine.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	EPA company No.	Product name	Chemical name
010088–00083	10088	Prometon 12.5% Herbicide Concentrate	Prometon.
010163–00323	10163	Scythe L Herbicide	Nonanoic acid.
034704–00318	34704	Dormant Flowable Emulsion	Mineral oil.
034704–00337	34704	Niagara Citrus Sol Oil Light Medium Code 30390.	Mineral oil.
054625–00002	54625	Brita Water Filter Travel Pak	Silver; Glycine, hydriodide (4:1), compd. with iodine (4:5).
055146–00056	55146	Gibgro 5% Powder	Gibberellic acid.
055146–00086	55146	Agtrol 6–BA	Gibberellin; Benzyladenine.
060061–00005	60061	2000 Soft Sloughing Type Antifouling Paint	Cuprous oxide.
060061–00033	60061	Vinelast Antifouling Finish 720 Permanent Red.	Cuprous oxide.
060061–00034	60061	Woolsey Vinelast Anti-Fouling Racing Finish 733 Permanent Green.	Cuprous oxide.
060061–00035	60061	Woolsey Vinelast Anti-Fouling Racing Finish 734 Permanent Blue.	Cuprous oxide.
060061–00051	60061	Pettit Marine Paint Anti-Fouling 1210 Blue Tropic.	Cuprous oxide.
060061–00065	60061	Pettit Marine Paint Unepoxy Tin Free Antifouling 1619 Red for Tropic.	Cuprous oxide.
060061–00077	60061	Neptune II Water Based Antifouling Finish 550 Blue.	Cuprous oxide.
066330–00271	66330	Dimethoate Technical	Dimethoate.
067071–00002	67071	Acticide PM	Chlorothalonil; Diuron.
067071–00036	67071	Microcare ITA	2-Methyl-3(2H)-isothiazolone; 5-Chloro-2-methyl-3(2H)-isothiazolone.
067071–00045	67071	Acticide MBL 5515	1,2-Benzisothiazlin-3-one; Bronopol.
067071–00059	67071	Acticide CBM–F	5-Chloro-2-methyl-3(2H)-isothiazolone; 1,2-Benzisothiazolin-3-one; 2-Methyl-3(2H)-isothiazolone.
067619–00018	67619	Silvio	Silver; Citric acid.
070404–00009	70404	Tinosan SDC–R	Silver; Citric acid.
074655–00002	74655	Spectrum RX–33	Sodium chlorite.
074655–00004	74655	Spectrum RX–32	Methylene bis (thiocyanate).
074655–00009	74655	Spectrum RX–508	2,2-Dibromo-3-nitrilopropionamide.
074655–00010	74655	Spectrum RX–65	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); Bis(trichloromethyl) sulfone.
074655–00022	74655	Amerstat 300	2,2-Dibromo-3-nitrilopropionamide.
074655–00029	74655	Drewborm Precursor	Sodium bromide.
075318–00006	75318	B2E–01	S-Methoprene.
083222–00024	83222	Bifen 2 Ag Gold-Cal	Bifenthrin.
AL110001	100	Gramoxone Inteon	Paraquat dichloride.
AR070007	264	Ricestar HT Herbicide	Fenoxaprop-p-ethyl.
AR090001	81880	Permit Herbicide	Halosulfuron.
AR110001	10163	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
AR120010	81880	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
AR120011	81880	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
AR120012	81880	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
AR120013	81880	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
AR120015	81880	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
AR810044	264	Monitor 4	Methamidophos.
AR870007	264	Monitor 4	Methamidophos.
AR940001	59639	Valent Bolero 10 G	Thiobencarb.
AZ030004	66222	Thiodan 3 EC Insecticide	Endosulfan.
AZ080005	352	DuPont Layby Pro Herbicide	Diuron; Linuron.
AZ880001	264	Rovral Fungicide	Iprodione.
AZ910004	10163	Gowan Trifluralin 10G	Trifluralin.
AZ980004	19713	Drexel Endosulfan 3EC	Endosulfan.
CA040015	66222	Galigan 2E Oxyfluorfen Herbicide	Oxyfluorfen.
CA040018	66222	Galigan 2E Oxyfluorfen Herbicide	Oxyfluorfen.
CA040019	100	Subdue Maxx	D-Alanine, N-(2,6-dimethylphenyl-N-(methoxyacetyl)-, methyl ester.
CA060014	62719	M-Pede	Potassium laurate.
CA070009	66222	Rimon 0.83 EC	Novaluron.
CA790188	264	Monitor 4	Methamidophos.
CA810059	264	Sevin Brand Sprayable Carbaryl Insecticide	Carbaryl.
CA960002	34704	Western Farm Service Dusting Sulfur	Sulfur.
CA960006	62719	Eagle WSP Fungicide	Myclobutanil.
CA970014	62719	Goal (R) 2XL Herbicide	Oxyfluorfen.
CA980001	264	Provado 1.6 Flowable	Imidacloprid.
CA990015	62719	Confirm 2F Agricultural Insecticide	Tebufenozide.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	EPA company No.	Product name	Chemical name
CO080001	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
DE010002	264	Sevin XLR Plus Carbaryl Insecticide	Carbaryl.
DE040002	55146	Phostrol Agricultural Fungicide	Phosphorous acid.
DE060001	66222	Diazinon AG500	Diazinon.
FL000007	62719	Dithane DF Agricultural Fungicide	Mancozeb.
FL000012	59639	Select Herbicide	Clethodim.
FL040008	50534	Bravo Ultrex	Chlorothalonil.
FL090011	279	Fury 1.5 EW Insecticide	Zeta-Cypermethrin.
FL890036	264	Sevin Brand 80 S Carbaryl Insecticide	Carbaryl.
FL890037	264	Sevin Brand 4F Carbaryl Insecticide	Carbaryl.
GA040004	50534	Bravo Ultrex	Chlorothalonil.
GA100005	100	Gramoxone Inteon	Paraquat dichloride.
GA110004	66222	Cotoran 4L	Fluometuron.
HI030001	66222	Thionex 50W	Endosulfan.
HI070006	66222	Thionex 3EC	Endosulfan.
HI090004	2935	HBT—Imaz	Imazapyr, isopropylamine salt.
HI910008	34704	Superior 70 Oil	Mineral oil.
IA080002	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
ID000016	352	Curzate 60DF	Cymoxanil.
ID030002	66222	Thionex 3 EC	Endosulfan.
ID030016	10163	Carzol SP Miticide/insecticide In Water Soluble Packaging.	Formetanate hydrochloride.
ID060018	66222	Abba 0.15EC	Abamectin.
ID080001	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
ID080016	100	Dual II Magnum	S-Metolachlor.
IL080002	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
IN980002	100	Princep Caliber 90 Herbicide	Simazine.
KS020001	7969	Distinct Herbicide	Diflufenzopyr-sodium; Dicamba, sodium salt.
KS040006	66222	Atrazine 4L	Atrazine.
KS040008	62719	NAF–127	Spinosad.
KS110003	7173	Rozol Prairie Dog Bait	Chlorophacinone.
KS120002	7173	Rozol Prairie Dog Bait	Chlorophacinone.
LA010010	241	Scepter 70 DG Herbicide	Imazaquin.
LA020006	62719	Confirm 2F Agricultural Insecticide	Tebufenozide.
LA060009	7969	Termidor 80 WG Termiticide/insecticide	Fipronil.
LA060010	7969	Termidor SC Termiticide/insecticide	Fipronil.
LA090003	100	Reflex Herbicide	Sodium salt of fomesafen.
LA090004	279	Mustang Max EW Insecticide	Zeta-Cypermethrin.
LA100001	10163	Onager Miticide	Hexythiazox.
LA110002	10163	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
ME000003	62719	Mimic 2LV	Tebufenozide.
ME080003	352	Dupont Express Herbicide with Totalsol Soluble Granules.	Tribenuron-methyl.
MN020010	100	Trinexapac Liquid	Trinexapac-ethyl.
MN080001	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
MN080008	352	DuPont Coragen Insect Control	Chlorantraniliprole.
MO090001	100	Reflex Herbicide	Sodium salt of fomesafen.
MO110002	100	Callisto Herbicide	Mesotrione.
MO120005	100	Callisto Herbicide	Mesotrione.
MS020022	352	Super Boll	Ethephon.
MS060011	66222	Abba 0.15EC	Abamectin.
MS060013	352	DuPont Classic Herbicide	Chlorimuron.
MS090004	100	Reflex Herbicide	Sodium salt of fomesafen.
MS110002	81880	Permit Plus	Thifensulfuron; Halosulfuron-methyl.
MT080001	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
NC060004	100	Gramoxone Inteon	Paraquat dichloride.
NC080001	66222	Thionex 3EC	Endosulfan.
NC080004	352	DuPont Linex 4L Herbicide	Linuron.
NC090006	66330	Permethrin 3.2 AG	Permethrin.
NC110002	100	Gramoxone Inteon	Paraquat dichloride.
ND020001	62719	Treflan H.F.P.	Trifluralin.
ND080001	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
ND080002	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
NE020003	7969	Distinct Herbicide	Diflufenzopyr-sodium; Dicamba, sodium salt.
NE080001	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
NE080002	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
NJ030004	100	Dual Magnum Herbicide	S-Metolachlor.
NJ040001	100	Dual Magnum Herbicide	S-Metolachlor.
NJ060001	100	Gramoxone Inteon	Paraquat dichloride.
NJ990004	100	Dual Magnum Herbicide	S-Metolachlor.
NJ990005	100	Dual Magnum Herbicide	S-Metolachlor.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	EPA company No.	Product name	Chemical name
NM010001	264	Balance Flexx Herbicide	Isoxaflutole.
NM080003	7969	Endura Fungicide	Boscalid.
NV060010	66222	Abba 0.15EC	Abamectin.
NY010002	62719	Confirm 2F Agricultural Insecticide	Tebufenozide.
NY020001	100	Actara	Thiamethoxam.
NY100002	100	Platinum Insecticide	Thiamethoxam.
NY100003	100	Flagship 25WG	Thiamethoxam.
NY100004	100	Flagship 0.22G	Thiamethoxam.
NY100005	100	Endigo ZC	Lambda-Cyhalothrin; Thiamethoxam.
NY100006	100	Platinum 75 SG Insecticide	Thiamethoxam.
NY110002	7969	Bas 556 SC	Metconazole; Pyraclostrobin.
OH050001	66222	Rimon 0.83 EC	Novaluron.
OH080001	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
OR000007	100	Trinexapac Liquid	Trinexapac-ethyl.
OR030008	66222	Equus DF	Chlorothalonil.
OR030012	66222	Thionex 50W Insecticide	Endosulfan.
OR030013	66222	Thiodan 3 EC Insecticide	Endosulfan.
OR030024	66222	Thiodan 3 EC Insecticide	Endosulfan.
OR030037	10163	Rubigan E.C.	Fenarimol.
OR060020	62719	Laredo EC	Myclobutanil.
OR990037	100	Bravo 825	Chlorothalonil.
OR990038	100	Bravo 720	Chlorothalonil.
SC100001	100	Endigo ZC	Lambda-Cyhalothrin; Thiamethoxam.
SC100004	100	Gramoxone Inteon	Paraquat dichloride.
SC110002	100	Reflex Herbicide	Sodium salt of fomesafen.
SC900004	100	Reflex 2lC Herbicide	Sodium salt of fomesafen.
SD040002	7969	Pristine Fungicide	Pyraclostrobin; Boscalid.
SD040003	7969	Emerald Fungicide	Boscalid.
SD060005	7969	Outlook Herbicide	Dimethenamide-P.
SD920007	279	Capture 2 EC	Bifenthrin.
TN090002	100	Reflex Herbicide	Sodium salt of fomesafen.
TX100001	10163	Onager Miticide	Hexythiazox.
TX100012	279	Fury 1.5 EW Insecticide	Zeta-Cypermethrin.
UT070003	400	Acramite-4SC	Befenazate.
UT070004	66222	Rimon 0.83 EC	Novaluron.
VA010001	59639	Distance Insect Growth Regulator	Pyriproxyfen.
VA089999	59639	Safari 20 SG Insecticide	Denotefuran.
WA010034	66222	Galigan 2E	Oxyfluorfen.
WA010037	66222	Galigan 2E	Oxyfluorfen.
WA030027	66222	Thiodan 3 EC Insecticide	Endosulfan.
WA090012	62719	Lorsban Advanced	Chlorpyrifos.
WA100001	264	Sevin Brand 4F Carbaryl Insecticide	Carbaryl.
WA990001	264	Ethrel Brand Ethephon Plant Regulator	Ethephon.
WI010008	66330	Iprodione 4l AG	Iprodione.
WY080002	279	Mustang Max EC Insecticide	Zeta-Cypermethrin.
WY120003	7173	Rozol Prairie Dog Bait	Chlorophacinone.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300.
228	Nufarm Americas, Inc., 4020 Aerial Center Pkwy., Suite 103, Morrisville, NC 27560.
239	The Scotts Company, D/B/A The Ortho Group, P.O. Box 190, Marysville, OH 43030.
241	BASF Corp., P.O. Box 13528, Research Triangle Park, NC 27709–3528.
264	Bayer CropScience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
279	FMC Corp. Agricultural Products Group, 1735 Market St., Rm. 1978, Philadelphia, PA 19103.
352	E.I. Du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898–0001.
400	Chemtura Corp., 199 Benson Rd., Middlebury, CT 06749.
432	Bayer Environmental Science, A Division of Bayer CropScience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
464	The Dow Chemical Company, 1500 East Lake Cook Road, Buffalo Grove, IL 60089.
499	Whitmire Micro-Gen Research Laboratories, Inc., 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682.
524	Monsanto Company, 1300 I Street NW., Suite 450 E., Washington, DC 20005.
1448	Buckman Laboratories Inc., 1256 North McLean Blvd., Memphis, TN 38108.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company name and address
1529	International Specialty Products, An Ashland Inc. Business, 1361 Alps Road, Wayne, NJ 07470.
1677	Ecolab Inc., 370 North Wabasha Street, St. Paul, MN 55102.
1706	Nalco Company, A Subsidiary of Ecolab Inc., 370 North Wabasha Street, St. Paul, MN 55102.
2217	PBI/Gordon Corp., P.O. Box 014090, Kansas City, MO 64101–0090.
2724	Wellmark International, 1501 E. Woodfield Rd., Suite 200 W., Schaumburg, IL 60173.
2935	Wilbur-Ellis Company, P.O. Box 1286, Fresno, CA 93715.
5813	The Clorox Co., c/o PS&RC, P.O. Box 493, Pleasanton, CA 94566–0803.
5887	Value Gardens Supply, LLC, 9100 W. Bloomington Freeway, Suite 113, Bloomington, MN 55431.
7173	Liphatech, Inc., 3600 W. Elm Street, Milwaukee, WI 53209.
7969	BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
8622	ICL–IP America, Inc., 95 Maccorkle Ave. Southwest, South Charleston, WV 25303.
9198	The Andersons Lawn Fertilizer Division, Inc., P.O. Box 119, Maumee, OH 43537.
10088	Athea Laboratories Inc., P.O. Box 240014, Milwaukee, WI 53224.
10163	Gowan Co., P.O. Box 5569, Yuma, AZ 85366–8844.
19713	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113–0327.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
50534	GB Biosciences Corp., P.O. Box 18300, Greensboro, NC 27419–5458.
54625	The Brita Products Co., c/o PS&RC, P.O. Box 493, Pleasanton, CA 94566–0803.
55146	Nufarm Americas, Inc., 4020 Aerial Center Pkwy., Suite 103, Morrisville, NC 27560.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
60061	Kop-Coat, Inc., 3020 William Pitt Way, Pittsburgh, PA 15238.
62719	Dow Agrosciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054.
66222	Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
66330	Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
67071	Thor GMBH, c/o Thor Specialties Inc., 50 Waterview Drive, Shelton, CT 06484.
67619	Clorox Professional Products Company, c/o PS&RC, P.O. Box 493, Pleasanton, CA 94566–0803.
70404	BASF Corporation, 100 Park Avenue, Florham Park, NJ 07932.
74655	Hercules Incorporated, A Wholly Owned Subsidiary of Ashland Inc., 7910 Baymeadows Way, Suite 100, Jacksonville, FL 32256.
75318	B2E Biotech LLC, 1501 East Woodfield Road, Schaumburg, IL 60173.
81880	Canyon Group LLC, c/o Gowan Company, 370 S. Main Street, Yuma, AZ 85364.
83222	Direct Ag Source, LLC, P.O. Box 538, Eldora, IA 50627.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II, EPA anticipates allowing registrants to sell and distribute existing stocks of these products until January 15, 2014. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 31, 2013.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2013–15034 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9390–4]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1a and 1b of Unit II. pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a November 28, 2012 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the November 28, 2013 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one comment on the notice but it did not merit its further review of the request. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. This order includes the last resmethrin product registrations in the United States. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective June 26, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of 22 products, including the last resmethrin product registrations, registered under FIFRA section 3. These registrations are listed in sequence by registration number in Tables 1a and 1b of this unit.

This notice also corrects a typographical error in the **Federal Register** issue of November 28, 2012 (77 FR 70998) (FRL–9370–3) regarding two EPA registration numbers and is corrected as follows:

EPA registration numbers 062910–00032 and 062910–00035 are corrected to read 062190–00032 and 062190–00035, respectively. These corrected registration numbers are included below in Table 1a.

TABLE 1a—PRODUCT CANCELLATIONS

EPA registration No.	Product name	Chemical name
000264–00977	Tops–MZ–Gaucho Potato Seed-Piece Treatment	Mancozeb Thiophanate-methyl Imidacloprid.
000264–00978	Gaucho–MZ Potato Seed-Piece Treatment	Mancozeb Imidacloprid.
000264–00996	Raxil MD–W Seed Treatment	Metalaxyl Tebuconazole Imidacloprid.
005383–00011	Troysan 174	2-((Hydroxymethyl)amino) ethanol.
010466–00028	Ultrafresh DM–50	Tributyltin maleate.
040849–00072	Enforcer P002–082797–RMP	*S*-Methoprene/Permethrin.
042177–00009	Olympic Algaecide 20	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
046043–00031	Suncoast's Pool Algaecide 20	Poly(oxy-1,2-ethanediyl (dimethylimino)-1,2-ethanediyl (dimethylimino)-1,2-ethanediyl dichloride).
062190–00032	Arch CMIT/MIT	5-Chloro-2-methyl-3(2*H*)-isothiazolone 2-Methyl-3(2*H*)-isothiazolone.
062190–00035	Arch CMIT/MIT 14 MUP	2-Methyl-3(2*H*)-isothiazolone 5-Chloro-2-methyl-3(2*H*)-isothiazolone.
074601–00001	Chlorothalonil Technical Fungicide	Chlorothalonil.
075449–00003	Sodium Bichromate Solution 69%	Dichromic acid, (H2Cr207), disodium salt, dihydrate.
AZ–030006	Dual Magnum Herbicide	*S*-Metolachlor.
AZ–070007	Gramoxone Inteon	Paraquat dichloride.
AZ–090001	Ethrel Brand Ethephon Plant Regulator	Ethephon.
CO090004	Actara Insecticide	Thiamethoxam.
CO120001	Gramoxone SL 2.0	Paraquat dichloride.
LA–110006	Milestone VM	Triisopropanolamine salt of aminopyralid.
OR–070032	DuPont Direx 4L Herbicide	Diuron.

TABLE 1b—RESMETHRIN PRODUCT CANCELLATIONS

Registration No.	Product name	Chemical name
000432–00667	Scourge Insecticide W/SBP–1382/Piperonyl Butoxide 18%+54% MF Form II.	Piperonyl butoxide/resmethrin.
000432–00716	Scourge Insecticide W/SBP–1382/Piperonyl Butoxide 4%+12% MF FII.	Piperonyl butoxide/resmethrin.
073049–00086	SBP–1382 Technical with Antioxidant	Resmethrin.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1a and 1b of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1a and 1b of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
264	Bayer Cropscience, LP, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
432	Bayer Environmental Science, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
5383	Troy Chemical Corp., 8 Vreeland Rd., P.O. Box 955, Florham Park, NJ 07932–4200.
10466	Thomas Research Associates, Shenstone Estates, 17804 Braemar Pl., Leesburg, VA 20176–7046.
40849	ZEP Commercial Sales & Services, 4196 Merchant Plaza, #344, Lake Ridge, VA 22192.
42177	Alliance Trading, Inc., 1150 18th St. NW., Suite 1000, Washington, DC 20036.
46043	Suncoast Chemicals Company, 14480 62nd St. N., Clearwater, FL 33760.
62190	Arch Wood Protection, Inc., 5660 New Northside Dr., Suite 1100, Atlanta, GA 30328.
73049	Valent Biosciences Corporation, 870 Technology Way, Libertyville, Ill 60048–6316.
74601	Oxon Italia S.P.A., Agent: Lewis & Harrison, LLC, 122 C St. NW., Suite 740, Washington, DC 20001.
75449	Elementis Chromium, LP, 5408 Holly Shelter Rd., Castle Hayne, NC 28429.
AZ030006, AZ070007, CO090004, CO120001.	Syngenta Crop Protection, LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300.
LA110006	DOW Agrosciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
OR070032	E.I. Dupont de Nemours and Company, (S300/419), Manager, Registration & Regulatory Affairs, 1007 Market St., Wilmington, Delaware 19898–0001.
AZ090001	Bayer Cropscience, LP, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received one comment, but the Agency does not believe that the comment submitted during the comment period merits further review or a denial of the request for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1a and 1b of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1a and 1b of Unit II. are canceled. The effective date of the cancellations that are the subject of this notice is June 26, 2013. Any distribution, sale, or use of existing stocks of the products identified in Table 1a and 1b of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of November 28, 2012 (77 FR 70998) (FRL–9370–3). The comment period closed on May 28, 2013.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

A. For All Products Listed in Table 1a in Unit II

The registrants may continue to sell and distribute existing stocks of products listed in Table 1a of Unit II. until June 26, 2014, which is 1-year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1a, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1a of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. For All Products Listed in Table 1b in Unit II

After December 31, 2015, registrants will be prohibited from selling, or distributing, existing stocks of products, containing resmethrin labeled for all uses. After December 31, 2015, persons other than the registrants will be allowed to sell, distribute, or use

existing stocks of products, containing resmethrin until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 18, 2013.

Michael Goodis,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–15320 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0401; FRL–9390–7]

Registration Review; Pesticide Dockets Opened for Review and Comment; Announcement of Registration Review Case Closures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this document, EPA is opening the public comment period for several registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the registration review case closures for the pesticides oxydemeton-methyl (ODM) (case #0258) and resmethrin (case #0421), and the availability of their respective Case Closure Documents. The cancellation of all ODM registrations will become effective on December 31, 2014. The cancellation of all resmethrin registrations will become effective December 31, 2015. These case closures are being announced herein with no comment period.

DATES: Comments must be received on or before August 26, 2013.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; email address: *costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the Agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and No.	Docket ID No.	Chemical review manager, telephone number, email address
Abamectin (Case 7430)	EPA–HQ–OPP–2013–0360	Khue Nguyen, (703) 347–0248, *nguyen.khue@epa.gov.*
Ametryn (Case 7036)	EPA–HQ–OPP–2013–0249	Molly Clayton, (703) 603–0522, *clayton.molly@epa.gov.*
Atrazine (Case 0062)	EPA–HQ–OPP–2013–0266	Monica Wait, (703) 347–8019, *wait.monica@epa.gov.*
Captan (Case 0120)	EPA–HQ–OPP–2013–0296	Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov.*
Coniothyrium minitans strain CON/M/91–08 (Case 6022)	EPA–HQ–OPP–2013–0259	Jeannine Kausch, (703) 347–8920, *kausch.jeannine@epa.gov.*
Fenhexamid (Case 7027)	EPA–HQ–OPP–2013–0187	Joel Wolf, (703) 347–0228, *wolf.joel@epa.gov.*
Halohydantoins (Case 3055)	EPA–HQ–OPP–2013–0220	Sandra O' Neill, (703) 347–0141, *oneill.sandra@epa.gov.*
Indoxacarb (Case 7613)	EPA–HQ–OPP–2013–0367	Katie Weyrauch, (703) 308–0166, *weyrauch.katie@epa.gov.*
Meat Meal (Case 6041)	EPA–HQ–OPP–2013–0361	Leonard Cole, (703) 305–5412, *cole.leonard@epa.gov.*
Mesosulfuron-methyl (Case 7277)	EPA–HQ–OPP–2012–0833	Jolene Trujillo, (703) 347–0103, *trujillo.jolene@epa.gov.*
Methoxyfenozide (Case 7431)	EPA–HQ–OPP–2012–0663	Bonnie Adler, (703) 308–8523, *adler.bonnie@epa.gov.*
Metofluthrin (Case 7445)	EPA–HQ–OPP–2012–0105	Veronica Dutch, (703) 308–8585, *dutch.veronica@epa.gov.*
Propazine (Case 7278)	EPA–HQ–OPP–2013–0250	Molly Clayton, (703) 603–0522, *clayton.molly@epa.gov.*
Propylene and dipropylene glycol (Case 3126)	EPA–HQ–OPP–2013–0218	Elizabeth Hernandez, (703) 347–0241, *hernandez.elizabeth@epa.gov.*
Pymetrozine (Case 7474)	EPA–HQ–OPP–2013–0368	Steven Snyderman (703) 347–0249, *snyderman.steven@epa.gov.*
Simazine (Case 7280)	EPA–HQ–OPP–2013–0251	Molly Clayton, (703) 603–0522, *clayton.molly@epa.gov.*
Tralopyril (Case 5144)	EPA–HQ–OPP–2013–0217	Wanda Henson, (703) 308–6345, *henson.wanda@epa.gov.*
Triethylene glycol (Case 3146)	EPA–HQ–OPP–2013–0219	Elizabeth Hernandez, (703) 347–0241, *hernandez.elizabeth@epa.gov.*
Trifloxysulfuron-sodium (Case 7260)	EPA–HQ–OPP–2013–0409	Kelly Ballard, (703) 305–8126, *ballard.kelly@epa.gov.*

This document also announces the registration review case closures for the pesticides ODM (case # 0258) and resmethrin (case # 0421), and the availability of their respective Case Closure Documents. For ODM, the Notice of Receipt of a Request to Voluntarily Cancel Certain Pesticide Registrations was issued on February 20, 2013, for a 30 day comment period (78 FR 11881) (FRL–9378–9); the Agency did not receive any comments. On May 1, 2013, the Agency published the Cancellation Order for all ODM product registrations in the **Federal Register** (78 FR 25438) (FRL–9384–7). Due to the publication of the Cancellation Order for all registered ODM products in the United States, the Agency closed the registration review case for ODM, pursuant to 40 CFR 155.42(c). In addition to the registration review Case Closure Document, the registration review docket (EPA–HQ–OPP–2008–0328) for ODM also includes other relevant documents related to the registration review of this case. This action is not open for public comment.

For resmethrin, the Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations was published in the **Federal Register** on November 28, 2012 for a 180-day public comment period (77 FR 70998) (FRL–9370–3). This notice announced voluntary cancellation requests that would terminate the last resmethrin products registered for use in the United States. No comments that impacted the Agency's decision to grant the cancellation requests were received during the 180-day public comment period. On June 26, 2013, the Agency published the Cancellation Order for all resmethrin registrations. Due to the publication of the Cancellation Order for all registered resmethrin products in the United States, the Agency has closed the registration review case for resmethrin, pursuant to 40 CFR 155.42(c). The resmethrin registration review Case Closure Document, along with other documents relevant to the registration review of resmethrin, is available in the resmethrin registration review docket (EPA–HQ–OPP–2012–0414). This action is not open for public comment.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files

including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 18, 2013.

Michael Goodis,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–15325 Filed 6–25–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before August 26, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1078.

Title: Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households.

Number of Respondents and Responses: 5,443,062 respondents; 5,443,062 responses.

Estimated Time per Response: 1–10 hours (average per response).

Frequency of Response: Recordkeeping requirement; On occasion reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is the CAN–SPAM Act of 2003, 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2719.

Total Annual Burden: 30,254,373 hours.

Total Annual Cost: $16,244,026.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published SORN, FCC/CGB–1,

''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356), which became effective on January 25, 2010.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–1078 enable the Commission to collect information regarding violations of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act). This information is used to help wireless subscribers stop receiving unwanted commercial mobile services messages.

On August 12, 2004, the Commission released an *Order,* Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194, published at 69 FR 55765, September 16, 2004, adopting rules to prohibit the sending of commercial messages to any address referencing an Internet domain name associated with wireless subscribers' messaging services, unless the individual addressee has given the sender express prior authorization. The information collection requirements consist of 47 CFR 64.3100(a)(4), (d), (e) and (f) of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–15207 Filed 6–25–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 09–182; MB Docket No. 07–294; DA–13–1317]

Media Bureau Invites Comments on Study Submitted by the Minority Media and Telecommunications Council in 2010 Quadrennial Review of Broadcast Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on a May 30, 2013, study from the Minority Media and Telecommunications Council (MMTC) titled *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations* (the Study) in the above referenced dockets.

DATES: Interested parties may file comments on or before July 22, 2013, and reply comments on or before August 6, 2013.

FOR FURTHER INFORMATION CONTACT: Benjamin Arden, Media Bureau, at (202) 418–2330 or email at *Benjamin.Arden@fcc.gov,* or Brendan Holland, Media Bureau, at (202) 418–2330 or email at *Brendan.Holland@fcc.gov*.

SUPPLEMENTARY INFORMATION: The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Washington, DC 20054. Customers may contact BCPI, Inc. at their Web site *http://www.bcpi.com* or call 1–800–378–3160.

Summary of the Public Notice

1. On May 30, 2013, the Minority Media and Telecommunications Council (MMTC) submitted a study by Fratrik, Dr. Mark R., Vice President and Chief Economist, BIA/Kelsey, entitled *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations* (the Study) in the above-referenced dockets. According to MMTC, the Study examines whether, and to what extent, cross-ownership might have a material adverse impact on minority and women ownership of commercial broadcast stations. MMTC suggests that the Commission seek public comment regarding the extent to which the Study may or should be relied on by the Commission in the ongoing media ownership and diversity proceedings.

2. The Media Bureau invites public comment on the Study from interested parties. The complete text of the Study dated May 30, 2013, is as follows:

The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations

Mark R. Fratrik, Ph.D., Vice President, Chief Economist, BIA/Kelsey [1]

May 30, 2013

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The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations

Executive Summary

3. The marketplace in which local radio and television stations, as well as local newspapers has changed quite dramatically in the past few years. Competition for audiences as well as for local advertisers has noticeably increased. At the same time, these traditional media are still important players in the advertising marketplace and the provision of news and entertainment to their local communities.

4. The regulations governing the ownership of these traditional media have changed too, though the ban on broadcast-newspaper local ownership is still in place. Many analysts have examined the continuance of that ban and relaxing other local broadcast ownership rules on the impact on competition and the provision of diverse viewpoints. There has not been any specific study on the impact of relaxing these local cross-ownership rules on the impact on minority and/or women owned broadcasters.

5. In this study we focus in on that research question—whether the existence of a commonly owned cross-media operation has a disparate impact on minority and/or women owned broadcast stations. Specifically, we surveyed both minority and/or women owned broadcast stations in markets with cross-media operations along with non-minority/non-women owned broadcast stations in the same markets. In that survey we asked respondents in several different ways to offer their views on the importance of these local cross-media operations. We wanted to see if there was a difference in the responses of the two groups of stations of these cross-media operations.

[1] This report was underwritten by a grant from the Minority Media and Telecommunications Council (MMTC). The author is appreciative of the survey design and evaluation guidance received from MMTC's volunteer peer reviewers—Dr. Jannette Dates, Dean Emerita, School of Communications, Howard University; Dr. Philip Napoli, Professor of Communication and Media Management at the Fordham Schools of Business and Director of the university's Donald McGannon Communication Research Center; and Allen Hammond, Esq., Associate Dean for Faculty Development, Phil and Bobbie Sanfilippo Chair and Professor of Law, and Director of the Broadband Institute of California, Santa Clara University School of Law.

6. While we would have preferred to have received more responses, we believe that the responses that we did receive indicated there is no difference in the views of the two groups of stations towards the impact of these cross-media operations. We were struck by the lack of any large concern by almost all of the respondents to these cross-media operations. Several times in the questionnaire we provided opportunities for the responding stations in both groups to offer those operations as answers. What was provided as answers are general business concerns that all radio and television stations have in all markets—strong broadcast station competitors especially in the genre of programming they provide and the emergence of new competitors from new sources. The only responses expressed regarding the impact of cross-media combinations were expressed by all three respondents in a medium market in which the daily newspaper is affiliated with a full power television station and local radio stations.

7. There may be sound justifications relating to overall viewpoint diversity, localism, or competition for why the cross-ownership rules should or should not be changed. However, it appears from this study that cross-media interests' impact on minority and women broadcast ownership is not sufficiently material to be a material justification for tightening or retaining the rules.

The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations

Introduction

8. Today's media marketplace is noticeably different than it was forty years ago. Consumers have access to many different sources of information and entertainment. Advertisers have many different options to reach their potential customers with their advertising messages. Included in those choices for both consumers and advertisers are local radio and television stations and daily and weekly newspapers. These local broadcast stations and newspapers still are important components of providing program and informational diversity.

9. During these last forty years, the prohibitions on the ownership of locally owned daily newspapers and local broadcast stations have remained in place, and some limited restrictions on ownership of local radio and television stations are also still in place. Yet, due to grandfathering of certain local newspaper-broadcast and permissible local radio-television operations, there are several local commonly owned cross-media operations. The impact of these established local cross-media operations have been studied extensively in the debate on whether these cross-media restrictions should be left unchanged, tightened, relaxed or eliminated.

10. One area that has not been studied as extensively has been the impact of these locally cross-media owned operations on other local stations owned by minority and/or women. One bedrock principle of communications policy has been to promote diverse ownership of broadcast stations to try to promote diversity in viewpoint and programming. If the impact of commonly owned local cross-media operations adversely and especially affects broadcast stations owned by minority and/or women, then relaxing these local ownership rules may have a negative impact on promoting diversity in ownership.

11. In this study we attempted to begin to answer that question. Specifically, we tried to survey stations owned or formerly owned by minority and/or women in markets where there was a commonly owned local cross-media operation. Our research question was simply to determine whether there was a disparate impact on these women/minority stations, we also attempted to survey stations in those same markets that were not owned by minority or women. Questions were asked about the level of competition and the provision of news and information in these local markets.[2]

12. Before discussing the actual results of the survey, it is important to highlight the limitations of this study's results. This study was not a comprehensive examination of all of the women and/or minority owned stations in all of the markets in which a commonly owned cross-media operation is present. Additionally, FCC and public interest groups' economists agree that the number of these instances is not large enough to conduct a random sample study to elicit generalizable results. On the other hand, what can be determined through this procedure is a reasonably clear sense of whether there is a material difference in the impact of these commonly owned local cross media operations. Of course, specific instances might be present that contradict these findings, but the results can provide some indications of whether there is an adverse or, especially, a disparate impact on these minority/women owned broadcasters.

[2] The questionnaire is included in Appendix A.

Procedure

13. In order to conduct the survey we first had to designate the women and/or minority owned broadcasters. The FCC has provided the race/gender ownership status of radio and television stations by station type (e.g., AM station). Utilizing those lists with the BIA/Kelsey Media Access Pro™ database of all broadcast stations and local daily newspapers, we were able to determine the individual markets in which all of these stations reside.[3]

14. Once we determined the market in which these stations are located, we then determined using the Media Access Pro™ database which stations are located in markets where a commonly owned cross-media operation exist. Minority and/or women owned stations were selected that were located in those markets in which there were either a commonly owned grandfathered radio/newspaper, grandfathered television/newspaper, or radio/television operation. Additional minority and/or women owned stations that were located in markets in which there were none of these commonly owned cross-media operations were also selected to act as a super-control group.

15. In all of these markets—with or without a commonly owned cross-media operation—additional stations were selected that were not owned by a woman or minority to be contacted. Care was taken to select non-minority/non-women owned broadcast stations to reflect stations that are part of large broadcast groups and those that are not. With this non-minority/non-women owned group we could compare their responses with the responses of women and/or minority owned broadcast stations in the same market and see whether there was a material difference in the impact of the cross-media operations.

16. These stations were initially individually contacted via email from the study's author alerting them of this study and that someone would be calling them to ask them questions concerning the competitiveness of their local radio or television market. Soon after that email those phone calls were made. To increase the number of responses, we subsequently sent an email with a link to an online survey questionnaire, with a promise of an online gift card if the survey was completed. All respondents were

[3] BIA/Kelsey maintains a comprehensive database in its Media Access Pro™ service of all commercial and noncommercial radio and television stations, as well as all daily and weekly newspapers. That database is updated daily to reflect personnel, technical, and ownership changes.

guaranteed confidentiality of their responses and that we were only going to report on the general trends of all respondents.

17. In total we obtained information from 14 local broadcast operations—13 of which represent 31 stations in those markets, along with information from a principal of a minority owned station that had exited a market in which there was a commonly-owned cross-media operation.[4] More responses would have been preferred and repeated attempts were made to induce responses from all that were contacted. Nevertheless, we think that the information obtained from this group of 14 respondents is sufficiently compelling and unambiguous to help answer the question of whether there is a disparate or adverse impact of commonly owned, local cross-media operations on minority or women owned broadcasters.

18. Included in the eight-question questionnaire were questions to elicit responses from the broadcast stations on which they felt were the most competitive (to them) radio or television stations in their local markets. Additionally, open ended questions on the important factors and challenges they face in selling advertising and providing local news and information were also asked. These general questions were purposely raised to see if the responding stations would cite the local commonly owned, cross-media operation in their answers. Further, we were curious to see if the respondents from minority and/or women owned stations would mention the commonly owned, cross-media operation more frequently in their responses to these questions than responses from the other group of stations.[5]

19. To supplement the questions on present direct competitors, other questions were included to draw out these stations' perceptions on the changes in competition from possibly other sources. Finally, questions were asked on the provision of news and information and what challenges are faced in providing news and information. That last general question was asked to see if the stations felt that the presence of a cross-media operation made the provision of news and information more difficult, and whether there were any differences in the two sets of responding stations to the difficulty in providing news and information.

Results

Competition in the Local Market

Present Competitors

20. The clear conclusion from the responses to the question of which stations are the most direct competitors we received is simply there was no difference in the responses from the minority and/or women owned stations and the other. There was one minority and/or women owned station and two non-minority/non-women owned stations that mentioned the local cross-media operation.[6] All of the other responses mentioned other radio and television stations in their local markets, primarily stations that provide similar programming.

21. In identical fashion, the responses to the question of which local station is the dominant competitor in the market plainly indicates that there is no difference between the perceptions of the two groups of respondents. Once again, there was one minority and/or women owned station and two non-minority/non-women owned stations that mentioned the local cross-media operation. All other stations indicated a local group of radio stations or specific stations or even other media in their responses.

22. Supporting that conclusion were the responses to two open-ended questions of the important factors and challenges they face in selling advertising in their local markets. None of the responses, either from the minority and/or women owned or the non-minority/non-women owned stations mentioned the presence of these cross-media operations, either directly or indirectly. The responses for these questions were very direct, mentioning the levels of competition within the media and from outside. Here are some of the specific responses to those open ended questions.

23. *What are the most important factors your station faces in regards to selling advertising time?*

- Market conditions, pricing, ratings.
- The perception of radio.
- Awareness, we are the new kids on the block.
- It is a price war with television combining their digital tier stations with their main channel bringing the overall cost lower than radio. We also have to overcome the internet and satellite radio objections as competition for our audience.
- Ratings, competitors' rates, the overall health of the economy.
- Price. Audience.
- Audience reach.
- Other viable alternative outlets providing my audience.
- High sales department churn; Weak Local Sales Manager; Weak Sales Training.
- Managing inventory with minimal waste.

24. *What challenges do you face in selling advertising time in your local market?*

- Current economic conditions with small business owners having enough advertising/marketing budget to achieve results for them.
- Retaining and hiring good qualified salespeople.
- Too much media/advertising available. There must be 100 items selling as advertising.
- Slow economy and the lack of locally owned stores.
- Tighter budgets in the face of new platforms. Digital reduced spending by advertising and combating annual contracts.
- We need to educate our clients about our format; the other radio station in the market always dives on rates; our clients believe they get better value in print vs. radio.
- The economic conditions are shaky at best.
- Advertisers to look at our medium and value it accordingly; we are looked as an ''old medium''.
- Businesses are still reluctant to spend money, economy is still tight. Radio is very competitive in this market with a lot of stations fighting for a small piece of the pie.

Emerging Competitors

25. Another question was asked on what emerging competitors do they see in their local market. Here again, we were providing an opportunity for the responding stations to mention the local cross-media operation. Additionally, we were seeing if there would be a

[4] Among the fourteen respondents, eight were from minority or women-owned companies and six were from nonminority-men owned companies. Among the eight respondents from minority or women-owned companies, five were from group owners, and four operated stations (within a group or otherwise) that were single stations in their markets. Among the six respondents from nonminority-men owned companies, three were from group owners, and one operated a station (within a group or otherwise) that was a single station in its market.

[5] In the survey research literature this procedure is referred to unaided recall, allowing the respondent to offer those points without any prompting. If the respondents do cite these issues as important without any prompting, then one can easily conclude as to its importance. All of the respondents were general managers and thus may be assumed to be familiar, for unaided recall purposes, with the factors that might impact their stations' programming, operations and competitive success.

[6] The three minority and/or women and non-minority/non-women owned broadcast stations respondents citing the cross media operation were in a medium market in which there was a local combination of the only daily newspaper, a full power television station, and radio stations.

difference between the two groups of respondents on whether the cross-media operations are thought of as emerging competitors.

26. The responses once again show the lack of concern about the local cross media operation as an emerging competitor. Only one respondent, a non-minority/non-women owned station, mentioned one cross media operation. Most of the other responses mention online/digital media companies such as Facebook, Google, Pandora, Spotify, and ''Digital platforms of all shapes and sizes.'' Two other respondents cited a new network being delivered through local television stations multicast signals, and another respondent mentioned another local television station.

Provision of News and Information and Challenges

27. As mentioned earlier, questions on the present provision of and challenges in providing news and information were asked. Here again we were attempting to see if the presence of cross-media operations made it more difficult for local stations to effectively provide news and information and whether there was a difference in the two sets of responding stations.

28. With respect to the number of minutes of news and information, the answers varied from a few music radio stations saying little or no minutes per hour to all news stations reporting that is their entire programming. Generally, most of the radio stations indicated some provision of news and information.

29. When asked about the challenges facing the provision of news and information on their stations, none of the respondents indicated the local cross-media operation. Below are some of the responses to that open ended question.

30. *What challenges do you face when delivering news and information on your station?*

- Our biggest challenge is the geographic makeup of our market, which is 75 miles north to south and east to west.
- Making it local.
- Competing with digital media to get the information first. Many more players on the digital front.
- Relative news but not too much news.
- Current information.
- Keeping viewer attention.
- Limited staff. (1) On-air talent and (1) producer-reporter affects our ability to cover ''breaking news''; currently evaluating/considering eliminating local news programming due to limited budget resources.
- Personnel to cover the news with reduced staff sizes.
- Having appropriate staffing numbers to cover the market.

31. Finally, we asked all respondents what competitive media outlets (both broadcast and non-broadcast) provide news and information. This question was asked to see if the local cross-media operation would be mentioned and whether the mentions of these operations were different for the two sets of responding stations. Only two stations, both non-minority/non-women owned stations, mentioned the local cross-media operation. All other respondents either mentioned specific radio and television stations or just a generic TV or Print. Two mentioned Yahoo as a local media outlet while another mentioned smartphones and tablets as a device to provide local news and information.

Conclusion

32. As mentioned in the introduction, this study was not intended as a comprehensive random sample survey of all instances of local cross-media operations in markets with stations owned by minorities and/or women. Instead, it was an attempt to solicit information from some of those stations about the competitive nature of local markets and provision of news and information from minority and/or women owned stations in these markets, along with non-minority/non-women owned stations in these same markets. In trying to obtain that information from these two groups of stations, we were trying to see if there was a material difference between the two groups on the impact of the cross-media operation.

33. Given our limited number of responses, great care has to be taken in reaching any conclusions. Yet, we are struck by the lack of any large concern by almost all of the respondents to these cross-media operations. Several times in the questionnaire we provide opportunities for the responding stations in both groups to offer those operations as answers. What was provided as answers are general business concerns that all radio and television stations have in all markets—strong broadcast station competitors especially in the genre of programming they provide and the emergence of new competitors from new sources.

34. This lack of mentions of local cross-media operations was also present in the questions concerning the provision of news and information. Answers were provided on other media outlets providing news and information involved strong stations within the local markets as well as generic answers of an entire media. Further, the answers to the challenges that the stations in both groups of respondents once again included general business concerns on providing programming that is compelling to watch and the emergence of new outlets providing such news and information.

35. So, what we have gleaned from the responses we did receive to our survey is a concern about the competitive marketplace facing radio and television stations from stations that are providing similar types of programming, and other new types of media. There was little if any mention of the local cross-media operations, except in a medium market where the cross-media interests included the daily newspaper, and a full power TV station and radio stations. Finally, there was no perceptible difference in the responses of the two groups of respondents to these issues.

36. The results of this study, while not dispositive, do provide evidence that the impact of cross-media ownership on minority and women broadcast ownership is probably negligible. This does not mean that the cross-media ownership rules should, or should not, be changed. There may be sound justifications relating to overall viewpoint diversity, localism, or competition why the rules should or should not be changed. However, it appears from this study that cross-media interests' impact on minority and women broadcast ownership is not sufficiently noticeable to station operators on the ground to be a material justification for tightening or retaining the rules.

Appendix A—Survey Questionnaire

Study on Impact of Cross-Media Owned Operations

1. What are the radio stations in your market that you compete against most directly? (name all that seem appropriate)
2. Besides other radio stations, what other media outlets in your market do you compete against?
4. Who do you consider the dominant competitor in the local market?
5. Who do you see as an emerging competitor in your local market?
6. What challenges do you face in selling advertising time in your local market?
7. How many minutes per hour or hours per day, on average Monday–Sunday, of local news do you estimate as providing on your station?
8. What challenges do you face in providing news and information on your station?
9. Who are the competitive local media outlets (both broadcast and non-broadcast) in providing news and information?

37. *Procedural Matters:* In the Notice of Proposed Rulemaking in the subject proceeding, the Commission established that the proceeding will be treated as ''permit but disclose'' for purposes of the Commission's *ex parte* rules.[7] Thus, as a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.[8] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

[7] 47 CFR 1.1200, 1.1206; *see also 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules & Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 Promoting Diversification of Ownership in the Broadcast Services,* MB Docket No. 09–182, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, 17570–71, ¶ 211 (2011).

[8] 47 CFR 1.1206.

38. *Comment Information:* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/or* the Federal eRulemaking Portal: *http://www.regulations.gov.*

▪ For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message ''get form.'' A Sample form and directions will be sent in response.

▪ *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

▪ People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2013–15166 Filed 6–25–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission invites comments on the continuing information collection (extension of the information collection with no changes) listed below in this notice.

DATES: Comments must be submitted on August 26, 2013.

ADDRESSES: You may send comments to: Vern W. Hill, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (Telephone: (202) 523–5800), *omd@fmc.gov*. Please reference the information collection's title, form, and OMB numbers (if any) in your comments.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and instructions, or copies of any comments received, contact Donna Lee, Management Analyst, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (Telephone: (202) 523–5800), *dlee@fmc.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Federal Maritime Commission, as part of its continuing effort to reduce

paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR Part 535—Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

OMB Approval Number: 3072–0045 (Expires September 30, 2013).

Abstract: Section 4 of the Shipping Act of 1984, 46 U.S.C. § 40301(a)-(c), identifies certain agreements by or among ocean common carriers and marine terminal operators (MTOs) that fall within the jurisdiction of that Act. Section 5 of the Act, 46 U.S.C. 40302, requires that carriers and MTOs file those agreements with the Federal Maritime Commission. Section 6 of the Act, 46 U.S.C. 40304, 40306, and 41307(b)–(d), specifies the Commission actions that may be taken with respect to filed agreements, including requiring the submission of additional information. Section 15 of the Act, 46 U.S.C. 40104, authorizes the Commission to require that common carriers, among other persons, file periodic or special reports. Requests for additional information and the filing of periodic or special reports are meant to assist the Commission in fulfilling its statutory mandate of overseeing the activities of the ocean transportation industry. These reports are necessary so that the Commission can monitor agreement parties' activities to determine how or if their activities will have an impact on competition.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission staff uses the information filed by agreement parties to monitor their activities as required by the Shipping Act of 1984. Under the general standard set forth in section 6(g) of the Act, 46 U.S.C. 41307(b)(1), the Commission must determine whether filed agreements are likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost. If it is shown, based on information collected under this rule, that an agreement is likely to have the foregoing adverse effects, the Commission may bring suit in the U.S. District Court for the District of Columbia to enjoin the operation of that agreement. Other than an agreement filed under section 5 of the Act, the information collected may not be disclosed to the public except as may be relevant to an administrative or judicial proceeding, and disclosure to Congress.

Frequency: This information is collected generally on a quarterly basis or as required under the rules.

Type of Respondents: The types of respondents are ocean common carriers and MTOs subject to the Shipping Act of 1984.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 462 entities.

Estimated Time per Response: The average time for filing agreements, including the preparation and submission of information required on Form FMC–150, *Information Form for Agreements Between or Among Ocean Common Carriers,* is estimated to be 8.4 person-hours per response. The average time for completing Form FMC–151, *Monitoring Report for Agreements Between or Among Ocean Common Carriers,* is estimated to be between 18 and 138 person-hours per response, depending on the complexity of the required information. The average time for reporting for all responses is 9.5 person-hours.

Total Annual Burden: The Commission estimates the total person-hour burden at 13,638 person-hours.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–15220 Filed 6–25–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A Copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012068–002.

Title: Grand Alliance/Zim/HSDG Atlantic Space Charter Agreement.

Parties: Hapag-Lloyd AG; Nippon Yusen Kaisha; Orient Overseas Container Line Inc., Orient Overseas Container Line Limited, and Orient Overseas Container Line (Europe) Limited (acting as a single party); Zim Integrated Shipping Services Limited; and Hamburg Süd KG.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would delete Zim as a party to the agreement, change the name of the agreement, increase the size of the vessels that the parties are authorized to operate, and clarify and delete obsolete language in the agreement. The amendment would also restate the agreement.

Dated: June 20, 2013.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–15219 Filed 6–25–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime

Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

ACL America, Inc. (NVO), 19401 S. Main Street, Suite 102, Gardena, CA 90248, Officers: Shelly Y. Seong, Secretary (QI), Roy Seong, Director, Application Type: New NVO License.

ADS Cargo, Inc. (NVO), 11155 NW 33rd Street, Doral, FL 33172, Officers: Julieth X. Zapata, Secretary (QI), Daniel Caceres, President, Application Type: New NVO License.

Choiceone Logistics, Inc. (NVO & OFF), 10025 NW 116th Way, Suite 17, Medley, FL 33178, Officer: Trina M. Gomez, President (QI), Application Type: New NVO & OFF License.

Expolanka USA LLC (NVO), 175–11 148th Road, Suite 205, Jamaica, NY 11434, Officers: Chandana J. Rodrigo, President (QI), Stephen B. Schwark, Treasurer, Application Type: License Transfer to EFL Container Lines, LLC.

Hont Global Services, Inc. (NVO & OFF), 10700 Corporate Drive, Suite 118, Stafford, TX 77477, Officer: Humphrey T. Okonkwo, President (QI), Application Type: New NVO & OFF License.

Hye Mi Express U.S.A., Inc. (NVO), 22926 Pennsylvania Avenue, Torrance, CA 90501, Officers: Young Soo Song, Vice President (QI), Young Mi Song, President, Application Type: New NVO License.

Livingston International, Inc. (NVO & OFF), 670 Young Street, Tonawanda, NY 14150, Officers: Todd McKinnon, Assistant Secretary, Peter Luit, CEO, Application Type: QI Change.

Ocean Freight Express, LLC (NVO & OFF), 812 Downtowner Blvd., Suite K, Mobile, AL 36609, Officers: Thomas (Mac) H. McPhillips IV, Assistant Vice President (QI), Oscar Fermamdez. Member, Application Type: New NVO & OFF License.

Magnum-Ramstr Cargo LLC (NVO & OFF), 2 Ethel Road, Suite 202C, Edison, NJ 08817, Officers: Alexander Adimula, Secretary (QI), Dilip Ram, President, Application Type: QI Change.

qHub Logistics Corporation (NVO), 8801 Fallbrook Drive, Houston, TX 77064, Officers: Jimmy Chen, Vice President (QI), James J. Huang, President, Application Type: New NVO License.

SM Worldwide USA, Inc. (NVO & OFF), 9111 S. La Cienega Blvd., Suite 205, Inglewood, CA 90301, Officer: Cecilia Hyon, CEO, Application Type: New NVO & OFF License.

Summit Forwarding, LLC (OFF), 6400 Powers Ferry Road, Suite 250, Atlanta, GA 30339, Officer: Dean Kalinowski, Member/Manager (QI), Application Type: QI Change.

Swan & Hercules Global Logistics (USA), LLC dba SHGL dba SHGL (USA) (NVO & OFF), 4980 E. Beverly Road, Phoenix, AZ 85044, Officer: Sven Asselberghs, Director (QI), Application Type: New NVO & OFF License.

TDR Logistics, Inc. (NVO & OFF), 21115 Lycoming Street, Walnut, CA 91789, Officer: Min Z. Lai, President (QI), Application Type: New NVO & OFF License.

Dated: June 20, 2013.

By the Commission.

Karen V. Gregory.

Secretary.

[FR Doc. 2013–15218 Filed 6–25–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 11, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Peter F. Lindholm,* Long Lake, Minnesota, individually and as trustee of Peter F. Lindholm 2012 Irrevocable trust; to retain voting shares of Maple Banc Shares, Inc., and thereby indirectly retain voting shares of Bank of Maple Plain, both in Maple Plain, Minnesota.

Board of Governors of the Federal Reserve System, June 21, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–15240 Filed 6–25–13; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0289; Docket 2012–0001; Sequence 18]

Submission for OMB Review; Tangible Personal Property Report (SF–428A, 428B, and 428C)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Office of Governmentwide Policy will submit to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning reporting tangible personal property.

In support of OMB's continuing effort to reduce paperwork and respondent burden, GSA invites the general public and other Federal agencies to take this opportunity to comment on the proposed information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning forms that will be used to collect information related to tangible personal property when required by a Federal financial assistance award. To view the form, go to OMB's main Web page at *www.OMB.gov* and click on the ''Grants Management'' and ''Forms'' links. OMB specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. A notice was published in the **Federal Register** at 78 FR 20644, on April 5, 2013. No comments were received.

DATES: *Comment Due Date:* July 26, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Nelson, Chair, Post-Award Workgroup; telephone 202–482–4538; fax 301–713–0806; email *Michael.Nelson@noaa.gov;* mailing

address 1305 East-West Highway, Room 7142, Silver Spring, MD 20910.

ADDRESSES: Submit comments identified by Information Collection 3090–0289, Tangible Personal Property Report, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0289, Tangible Personal Property Report''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0289, Tangible Personal Property Report'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. *ATTN:* Hada Flowers/IC 3090–0289, Tangible Personal Property Report.

Instructions: Please submit comments only and cite Information Collection 3090–0289, Tangible Personal Property Report, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA, on behalf of the Federal Grants Streamlining Initiative, proposes to renew a standard form, the Tangible Personal Property Report (SF–428). The SF–428 includes a cover page, an Annual Report attachment, a Final Report attachment, a Disposition/Request Report attachment and a Supplemental Sheet to provide detailed item information. The purpose of this form is to provide a standard form for assistance recipients to use when they are required to provide a Federal agency with information related to federally owned property, or equipment and supplies (tangible personal property) acquired with assistance award funds. The form does not create any new reporting requirements. It does establish a standard annual reporting date of September 30 to be used if an award does not specify an annual reporting date. The standard form will replace any agency unique forms currently in use to allow uniformity of collection and to support future electronic submission of information.

Background

Public Law 106–107 requires OMB to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. The law also requires executive agencies to develop, submit to Congress, and implement a plan for that streamlining and simplification. Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001. The plan described the interagency process through which the agencies would review current policies and practices and seek to streamline and simplify them. The process involved interagency work groups under the auspices of the U.S. Chief Financial Officers Council, Grants Policy Committee. The plan also identified substantive areas in which the interagency work groups had begun their review. Those areas are part of the Federal Grants Streamlining Initiative.

This proposed form is an undertaking of the interagency Post-Award Workgroup that supports the Federal Grants Streamlining Initiative. Additional information on the Federal Grants Streamlining Initiative, which focuses on implementing the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107), is set forth in the **Federal Register** published on September 13, 2006 (71 FR 54098). An overview of the SF–428 and five other report forms being developed under the Initiative was provided during a webcast of the Grants Policy Committee of the U.S. Chief Financial Officers Council held on March 8, 2007 (72 FR 7090, February 14, 2007).

Under the standards for management and disposition of federally-owned property, equipment and supplies (tangible personal property) in 2 CFR part 215, the ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and the ''Uniform Administrative Requirements for Grants and Agreements with State and Local Governments,'' codified by Federal agencies at 53 FR 8048, March 11, 1988, recipients may be required to provide Federal agencies with information concerning property in their custody annually, at award closeout or when the property is no longer needed. During the public consultation process mandated by Public Law 106–107, recipients suggested the need for clarification of these requirements and the establishment of a standard form to help them submit appropriate property information when required. The Tangible Personal Property Report (SF–428) must be used in connection with requirements listed in the table below and Federal awarding agency guidelines:

For . . .	A recipient must . . .	When . . .	Under . . .
Federally owned property	Submit an inventory listing ...	Annually, with information accurate as of 30 September, unless the award specifies a different date.	2 CFR 215.33(a)(1) A–102, __.32(f)(2).
	Request Federal agency authorization.	It wants to use the property on other activities not sponsored by the Federal Government.	2 CFR 215.34(d).
	Notify the Federal awarding agency.	Immediately upon finding property is lost, damaged, or stolen.	2 CFR 215.33(f)(4).
	Request disposition instructions.	The property is no longer needed ...	2 CFR 215.33(a)(1) A–102, __.32(f)(3).
		Upon completion of the award	2 CFR 215.33(a)(1) and 2 CFR 215.71(f) A–102, __.50(b)(5).

For . . .	A recipient must . . .	When . . .	Under . . .
Grantee-acquired equipment in which the Federal Government retains an interest.	Obtain the approval of the Federal awarding agency.	Acquiring replacement equipment, before: (1) Using the current equipment as trade-in; or (2) selling it and using the proceeds to offset the costs of the replacement equipment.	2 CFR 215.34(e) A–102, __.32(c)(4).
	Compensate the original Federal awarding agency or its successor.	Equipment has a per unit fair market value of greater than $5,000 and the grantee no longer needs the equipment for Federally supported activities and retains the equipment for other uses.	2 CFR 215.34(g) A–102, __.32(e)(2).
	Request disposition instructions.	It no longer needs the equipment for any purpose.	2 CFR 215.34(g).
	Sell the equipment and reimburse the Federal awarding agency for the Federal share.	Equipment has a per unit fair market value of greater than $5,000 and the recipient no longer needs the equipment for any purpose and requested disposition instructions, and either was instructed to sell the equipment or received no instructions within 120 days.	2 CFR 215.34(g)(1) A–102, __.32(e)(2).
	Account for the equipment ...	Upon completion of the award, when the awarding agency has reserved the right to transfer title to the Federal Government or a third party.	2 CFR 215.71(f) and 2 CFR 215.34(g)(4)(ii).
Supplies	Compensate the Federal Government for its share.	It has a residual inventory of unused supplies exceeding $5,000 in aggregate value at the end of a project or program that is not needed for other Federally supported activities.	2 CFR 215.35(a) A–102, __.33(b).

B. Annual Reporting Burden

This report will be used to collect information related to tangible personal property (equipment and supplies) when required by a Federal financial assistance award. The Tangible Personal Property Report (SF–428) was posted to the OMB MAX Web site. Fourteen agencies posted annual burden estimates. The estimated total annual burden hours are 33,346.5. A listing with the number of respondents, the number of responses per respondent and average burden per hour per recipient by agency follows.

Respondents: Federal agencies and their assistance recipients.

Estimated Total Annual Burden Hours: 33,346.5

Estimated Cost: There is no expected cost to the respondents or to agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Agency	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tangible Personal Property Report (TPPR) and Attachments.	DOE	750	1.5	2.75	3094
Tangible Personal Property Report (TPPR) and Attachments.	EPA	300	1	2	600
Tangible Personal Property Report (TPPR) and Attachments.	DOD	300	1	2.75	825
Tangible Personal Property Report (TPPR) and Attachments.	SSA	125	1	2	250
Tangible Personal Property Report (TPPR) and Attachments.	IMLS	1000	1.5	2	3000
Tangible Personal Property Report (TPPR) and Attachments.	DOC	130	1	2	260
Tangible Personal Property Report (TPPR) and Attachments.	DHS	972	1.5	2.75	4009.5
Tangible Personal Property Report (TPPR) and Attachments.	HHS OPDIVs	7681	1	2	15362
Tangible Personal Property Report (TPPR) and Attachments.	HUD	4158	1	1.43	5946
Tangible Personal Property Report (TPPR) and Attachments.	NEA	0	0	0	0

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Agency	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tangible Personal Property Report (TPPR) and Attachments.	NEH	0	0	0	0
Tangible Personal Property Report (TPPR) and Attachments.	ED	0	0	0	0
Tangible Personal Property Report (TPPR) and Attachments.	VA	0	0	0	0

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–00017, telephone (202) 501–4755. Please cite OMB Control No. 3090–0289, Tangible Personal Property Report, in all correspondence.

Dated: June 18, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–15294 Filed 6–25–13; 8:45 am]

BILLING CODE 6820–RH–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114; Docket 2012–0076; Sequence 60]

Federal Acquisition Regulation; Submission for OMB Review; Right of First Refusal of Employment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection. A notice was published in the **Federal Register** at 78 FR 17670, on March 22, 2013. No comments were received.

DATES: Submit comments on or before July 26, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0114, Right of First Refusal of Employment, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0114, Right of First Refusal of Employment''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0114, Right of First Refusal of Employment'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. ATTN: Hada Flowers/IC 9000–0114, Right of First Refusal of Employment.

Instructions: Please submit comments only and cite Information Collection 9000–0114, Right of First Refusal of Employment, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, at (202) 208–4949 or via email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

As prescribed in FAR 7.305(c), the clause at FAR 52.207–3, Right of First Refusal of Employment, deals with adversely affected or separated Government employees resulting from the conversion of work from in-house performance to performance by contract. The clause requires the contractor to give these employees an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

The total annual burden has increased from 912 hours to 30,327 hours. This is based on an analysis of the Federal Procurement Data System—Next Generation (FPDS–NG) which shows that for Fiscal Years 2011 and 2012 there were 9,198 and 11,020, respectively, new A–76 awards. An average of the number of the A–76 awards for these two years equates to 10,109.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Number of Respondents: 10,109.

Responses per Respondent: 1.

Total Responses: 10,109.

Average Burden Hours per Response: 3.

Total Burden Hours: 30,327.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001, telephone (202) 501–4755. Please cite OMB Control No. 9000–0114,

Right of First Refusal of Employment, in all correspondence.

Dated: June 21, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–15298 Filed 6–25–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011; Docket 2010–0083; Sequence 22]

Federal Acquisition Regulation; Information Collection; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning preaward survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408).

DATES: Submit comments on or before August 26, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408) by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0011.

Instructions: Please submit comments only and cite Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–219–0202 or email *Cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.,* capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor: (i) Has adequate financial resources, or the ability to obtain such resources; (ii) is able to comply with required delivery schedule; (iii) has a satisfactory record of performance; (iv) has a satisfactory record of integrity; and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence. This data is entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. These standard forms are not cumulative. The surveying activity completes only the applicable standard form(s) necessary to determine contractor responsibility in each case.

B. Annual Reporting Burden

There are no Governmentwide systems for collecting the number of preaward surveys completed in a fiscal year as preaward surveys are only required in limited circumstances where information for the prospective contractor cannot be obtained by the contracting officer to make an affirmative statement of responsibility. Further, if the contemplated contract will have a fixed price at or below the $150,000 simplified acquisition threshold (SAT) or will involve the acquisition of commercial items (see *Part 12*); the contracting officer should not request a preaward survey unless circumstances justify its cost.

Using parameters identified above a Federal Procurement Data System (FPDS) ad hoc report was completed identifying that in Fiscal Year (FY) 2012 an estimated total of 11,805 contracts were awarded Governmentwide that were over the SAT, and for which commercial acquisition procedures were not used. Of that number, it is estimated that preaward surveys were completed for 30 percent, or 3,540 of the 11,805 contracts that were awarded. Of the six Standard Forms (1403, 1404, 1405, 1406, 1407, and 1408), we estimated that Standard Form 1403 is used most frequently because it is a general form and accounts for 30 percent or 1,062 times, Standard Forms 1404 and 1407 account for 15 percent or 531 times, Standard Form 1408 accounts for 20 percent or 708 times, and Standard Forms 1405 and 1406 account 10 percent or 354 times.

Additionally, there is no Governmentwide data collection process or system which identifies the actual number of hours necessary to prepare and complete Standard Forms. To date, no public comments or questions have been received regarding the estimated burden hours per response included in prior approved clearances. After consultation with subject matter experts, it was determined that the time required to prepare and complete the Standard Forms is estimated at 24 hours per response. Because preaward survey data is generally used for multiple contracts awarded within a 12 month period, it is estimated that only one (1) response would be reported annually per respondent per form.

Standard Form 1403—Preaward Survey of Prospective Contractor (General)

Respondents: 1,062.
Responses annually: 1.
Total Responses: 1,062.
Hours per Response: 24.
Total Burden Hours: 25,488.

Standard Form 1404—Preaward Survey of Prospective Contractor Technical

Respondents: 531.
Responses annually: 1.

Total Responses: 531.
Hours per Response: 24.
Total Burden Hours: 12,744.

Standard Form 1405—Preaward Survey of Prospective Contractor Production

Respondents: 354.
Responses annually: 1.
Total Responses: 354.
Hours per Response: 24.
Total Burden Hours: 8,496.

Standard Form 1406—Preaward Survey of Prospective Contractor Quality Assurance

Respondents: 354.
Responses annually: 1.
Total Responses: 354.
Hours per Response: 24.
Total Burden Hours: 8,496.

Standard Form 1407—Preaward Survey of Prospective Contractor Financial Capability

Respondents: 531.
Responses annually: 1.
Total Responses: 531.
Hours per Response: 24.
Total Burden Hours: 12,744.

Standard Form 1408—Preaward Survey of Prospective Contractor Accounting System

Respondents: 708.
Responses annually: 1.
Total Responses: 708.
Hours per Response: 24.
Total Burden Hours: 16,992.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence.

Dated: June 20, 2013.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–15296 Filed 6–25–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115; Docket 2012–0076; Sequence 70]

Submission for OMB Review; Notification of Ownership Changes

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning notification of ownership changes. A notice was published in the **Federal Register** at 77 FR 74663, on December 17, 2012. One respondent submitted comments.

DATES: Comments may be submitted on or before July 26, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0115, Notification of Ownership Changes by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0115, Notification of Ownership Changes''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0115, Notification of Ownership Changes'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405–0001. ATTN: Hada Flowers/IC 9000–0115, Notification of Ownership Changes.

Instructions: Please submit comments only and cite Information Collection 9000–0115, Notification of Ownership Changes, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–3221 or email *edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Discussion and Analysis

One respondent submitted comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR clause 52.215–19. This clause requires a contractor, when becoming aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, to notify the Administrative Contracting Officer (ACO) within 30 days. Further, the contractor has

responsibilities regarding the maintenance and availability of inventory records of assets. Without this information or ability to access the information, after an ownership change, the Government would be unable to ascertain whether contractor assets were properly valuated. The cost principles at FAR 31.205–52 address the allowability of certain costs resulting from asset valuations following business combinations. In order to administer the cost principles adequately, the information required by FAR 52.215–19 is necessary.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Upon consideration of the respondent's comments and review of Fiscal Year 2012 (FY12) Federal Procurement Data System (FPDS) information an adjustment is being made to the estimated annual burden. Based on FPDS information approximately 1200 novations and non-novated mergers and acquisitions were recorded in FY12 as descriptions for modifications. However, it is estimated that 50 percent or 600 of such actions will require the contractor to meet the requirements specified at FAR 52.215–19. The clause is only required to be inserted in solicitations and contracts for which it is contemplated that certified cost or pricing data will be required or for which any pre-award or post-award cost determination will be subject to *Subpart 31.2.* The estimate of hours per response is adjusted upwards to partly allow for the internal coordination and analysis before submitting the information to the Government as stated by the respondent. However the significant adjustment suggested was not made because, apart from a notification to the ACO, the requirements of the clause are passive, requiring contractors to maintain rather than to create records to meet the specific requirements for Government submission, and should be part of the normal course of doing business. At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Respondents: 600.

Responses per Respondent: 1.

Total Responses: 600.

Hours per Response: 5.

Total Burden Hours: 3000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: June 21, 2013.

William Clark,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–15300 Filed 6–25–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Department of Health and Human Services Public Meeting and Request for Comments on Matters Related to the Protection of Human Subjects and Research Studying Standard of Care Interventions

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting and request for comments.

SUMMARY: The Department of Health and Human Services (HHS) is announcing a public meeting to seek public input and comment on how certain provisions of the HHS requirements related to the protection of human subjects should be applied to research studying one or more interventions which are used as standard of care treatment in the non-research context. HHS specifically is requesting input regarding how an institutional review board (IRB) should assess the risks of research involving randomization to one or more treatments within the standard of care for particular interventions, and what reasonably foreseeable risks of the research should be disclosed to research subjects in the informed consent process. HHS is seeking participation in the meeting and written comments from all interested parties, including, but not limited to, IRB members, IRB staff, institutional officials, research institutions, investigators, research subject advocacy groups, ethicists, and the regulated community at large. This meeting and the written comments are intended to assist HHS, through the Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health (OASH), in developing guidance regarding what constitutes reasonably foreseeable risk in research involving standard of care interventions such that the risk is required to be disclosed to research subjects. HHS is seeking input on a number of specific questions but is interested in any other pertinent information participants in the public meeting would like to share.

DATES: *Meeting:* The public meeting will be held on August 28, 2013, from 9 a.m. to 5 p.m.

Deadline for Registration for Participants (not Presenting) at the Public Meeting and Submitting Requests for Special Accommodations: Registration to attend the public meeting and requests for special accommodations must be received no later than 5 p.m. on August 14, 2013.

Deadline for Registration of Presenters at the Public Meeting: Registration to present at the public meeting must be received no later than 5 p.m. on August 7, 2013.

Deadline for Submission of Written Comments for the Public Meeting: Written comments for discussion at the public meeting must be received no later than 5 p.m. on August 7, 2013. In addition to materials submitted for discussion at the public meeting, individuals may submit other written comments after the public meeting, as specified in the **ADDRESSES** section of this notice. These comments must be received no later than 5 p.m. on September 9, 2013, for consideration by HHS.

ADDRESSES: The Public Meeting will be held at the Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Ave. SW., Great Hall, Washington, DC 20201; Metro: Federal Center SW station.

In addition, we are providing an alternative to attending the meeting in person; participants may view the public meeting via live streaming technology. Information on that option is provided in section II.D. of this notice.

Registration and Special Accommodations: While there is no registration fee, individuals planning to attend the public meeting in person must register to attend. Registration may be completed by sending an email to *OHRP@hhs.gov*, with the subject line ''Registration for HHS Public Meeting''; or a request to register may be sent to: Registration for HHS Public Meeting, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Please include your name, address, telephone number, email address, and fax number. If you would like to present at the public meeting, please state this in the registration submission.

Registration to attend the public meeting will be accepted on a first-come, first-served basis. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

Registration to present at the public meeting will be accepted on a first-come, first-served basis. HHS has included questions for comment in section III of this document. Please identify by number each question you wish to address in your presentation and the approximate time requested. HHS will do its best to accommodate requests to speak. HHS will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. Once HHS notifies registered presenters of their scheduled times, presenters should submit a copy of each presentation, identified with docket number HHS–OPHS–2013–0004, to *http://www.regulations.gov.*

Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Submission of Comments for the Public Meeting

Submit electronic comments, identified with docket number HHS–OPHS–2013–0004, to *http://www.regulations.gov.*

Submit written comments to Comments for HHS Public Meeting, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Menikoff, Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; phone 240–453–6900; email *Jerry.Menikoff@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. HHS Protection of Human Subjects Regulations

HHS, through OHRP, regulates research involving human subjects conducted or supported by HHS in regulations. The HHS human subjects protection requirements pertain to several different entities, including the IRB charged with reviewing non-exempt human subjects research.

The IRB is an administrative body that takes the form of a board, committee, or group, and is responsible for conducting the initial and continuing review of research involving human subjects. The IRB must have authority to approve, require modification in (in order to secure approval), or disapprove all research activities regulated by HHS. An IRB's primary purpose in reviewing research is to ensure the protection of the rights and welfare of human research subjects. In order to approve research, an IRB is required to make certain determinations, including that the following criterion is met:

> Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

The HHS human subjects protections further require that, unless this requirement is waived by the IRB, an investigator must obtain informed consent from research subjects prior to the subjects' participation in the research, and that, in this informed consent process, the subjects must be provided ''a description of any reasonably foreseeable risks or discomforts to the subject.''

B. OHRP's Compliance Oversight Investigation of SUPPORT

On March 7, 2013, OHRP issued a compliance oversight determination letter regarding its investigation into ''The Surfactant, Positive Pressure, and Oxygenation Randomized Trial'' (SUPPORT) clinical trial (*http://www.hhs.gov/ohrp/detrm_letrs/YR13/mar13a.pdf*), in which OHRP determined that certain risks related to the interventions being studied in the SUPPORT trial were required by the HHS protection of human subjects regulations to be disclosed to the research subjects, and the subjects were not informed of these risks. OHRP's view of the SUPPORT trial, as described in this determination letter, triggered extensive public discussions regarding (1) what risks to subjects are presented by clinical trials studying interventions that are standard of care in the clinical treatment context, such that an IRB must evaluate those risks in relation to the anticipated benefits of the research; and (2) how an IRB should assess whether those risks are reasonably foreseeable such that the risks must be described to subjects in informed consent. Through the public reaction to OHRP's determination letter, HHS has become aware of differing perspectives in the scientific, research, and ethics communities about these issues and how the relevant requirements of the HHS protection of human subjects regulations should apply to research studying standard of care interventions.

II. Public Meeting

A. Purpose and Scope of the Meeting

The public meeting is intended to provide an opportunity for broad public participation and comment concerning how the HHS human subjects

protections requirements should be applied to research studying one or more interventions which are used as standard of care treatment in the non-research context. HHS specifically is requesting input regarding how an IRB should assess the risks of research involving randomization to one of more standard of care interventions, and what reasonably foreseeable risks of the research should be disclosed to research subjects in the informed consent process. This meeting and the written comments are intended to assist HHS, through the OHRP, OASH, in developing guidance regarding what constitutes reasonably foreseeable risk in research involving standard of care interventions such that the risk is required to be disclosed to research subjects.

While HHS is considering whether other processes should be incorporated into OHRP's compliance oversight procedures and guidance, including, but not limited to, consultation with subject matter experts during the course of a compliance oversight investigation, and an administrative process for appealing OHRP determinations of noncompliance, this meeting is not intended to specifically address possible revisions to OHRP's compliance oversight procedures.

B. Format of the Meeting

The meeting will be conducted by a panel of HHS officials, including the Director of OHRP. The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be determined by HHS and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register. Only the HHS panel members may question any presenter during or at the conclusion of each presentation. The meeting will be recorded and transcribed.

In addition, written comments will also be accepted and presented at the meeting, time permitting, if they are received by the date specified in the **DATES** section of this notice.

C. Security and Building Guidelines

Because the public meeting will be located on federal property, for security reasons any persons wishing to attend this meeting must register by the date specified in the **DATES** section of this notice. Attendees should allow sufficient time to go through the security checkpoints. Attendees should arrive at the Hubert H. Humphrey Building no later than 8:30 a.m.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Guard Service personnel.
- Passing through a metal detector and inspection of items brought into the building; note that all items brought to HHS are subject to inspection.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting in person. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting(s). All visitors must be escorted while in the building.

D. Live Streaming Information

For participants who cannot attend the public meeting in person there will be an option to view the public meeting via live streaming technology. Information on the option to view the meeting via live streaming technology will be posted at a later time on the OHRP Web site at *http://www.hhs.gov/ohrp.* Any other updates to information on the meeting will be posted on the OHRP Web site.

III. Issues for Discussion

HHS invites comment at the public meeting about how an IRB should assess the risks of research involving randomization to one or more standard of care interventions, and what risks of the research should be disclosed to research subjects in the informed consent process. HHS is specifically interested in public input on the following questions:

1. How should an IRB assess the risks of standard of care interventions provided to subjects in the research context?

a. Under what circumstances should an IRB consider those to be risks that may result from the research?

b. Under what circumstances should an IRB refrain from considering those risks as unrelated to the research?

c. What type of evidence should an IRB evaluate in identifying these risks?

2. What factors should an IRB consider in determining that the research-related risks of standard of care interventions, provided to research subjects in the research context, are reasonably foreseeable and therefore required to be disclosed to subjects?

a. What criteria should be used by the IRB to evaluate whether the risks to subjects are reasonably foreseeable?

3. How should randomization be considered in research studying one or more interventions within the standards of care? Should the randomization procedure itself be considered to present a risk to the subjects? Why or why not? If so, is the risk presented by randomization more than minimal risk? Should an IRB be allowed to waive informed consent for research involving randomization of subjects to one or more standard of care interventions? Why or why not?

4. How, and to what extent, does uncertainty about risk within the standard of care affect the answers to these questions? What if the risk significantly varies within the standard of care?

5. Under what circumstances do potential risks qualify as reasonably foreseeable risks? For example, is it sufficient that there be a documented belief in the medical community that a particular intervention within the standard of care increases the risk of harm, or is it necessary that there be published studies identifying the risk?

IV. Transcripts

As soon as a transcript of the public meeting is available, it will be accessible on the OHRP Web site, *http://www.hhs.gov/ohrp.* A transcript also will be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the PHS FOIA Office, 7700 Wisconsin Avenue, Suite #920, Bethesda, MD 20857; telephone (301) 492–4800; fax (301) 492–4848; email *FOIARequest@psc.hhs.gov.*

Dated: June 19, 2013.

Howard K. Koh,

Assistant Secretary for Health.

[FR Doc. 2013–15160 Filed 6–25–13; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Office of the Surgeon General of the United States Public Health Service, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled to be held for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the ''Advisory Group''). The meeting will be open to the public.

Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.surgeongeneral.gov/initiatives/prevention/advisorygrp/index.html.*

DATES: The meeting will be held on July 15, 2013 from 12–2 p.m.

ADDRESSES: The meeting will be held via teleconference. For conference information and to register for the meeting, please send an email to *prevention.council@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, 200 Independence Ave. SW.; Hubert H. Humphrey Building, Room 701H; Washington, DC 20201; 202–205–9517; *prevention.council@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Group is a non-discretionary Federal advisory committee that was initially established under Executive Order 13544, dated June 1, 2012, to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. The Advisory Group was established to assist in carrying out the mission of the National Prevention, Health Promotion, and Public Health Council (the Council). The Advisory Group provides recommendations and advice to the Council. Under Executive Order 13591, dated November 23, 2011, operation of the Advisory Group was terminated on September 30, 2012. On December 7, 2012, President Obama issued Executive Order 13631 to re-establish the Advisory Group. The Advisory Group is authorized to operate until September 30, 2013.

It is authorized for the Advisory Group to consist of not more than 25 non-federal members. The Advisory Group currently has 22 members who were appointed by the President. The membership includes a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine.

This will be the eighth meeting of the Advisory Group. Topics for discussion during this meeting include the status of the Advisory Group's third set of recommendations, updates from the working groups, and the draft agenda for the next Advisory Group meeting, which is planned to be held on September 26–27, 2013.

Members of the public who wish to attend must register by 12:00 p.m. EST on July 10, 2013. Individuals should register for public attendance at *prevention.council@hhs.gov* by providing your full name and affiliation. The public will have the opportunity to provide comments to the Advisory Group during this meeting; public comment will be limited to 3 minutes per speaker. Registration through the designated contact for the public comment session is also required.

Dated: June 20, 2013.

Corinne M. Graffunder,

Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health Office of the Surgeon General.

[FR Doc. 2013–15324 Filed 6–25–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the July meeting, the Advisory Council will discuss the *National Plan to Address Alzheimer's Disease: 2013 Update,* and the 2013 recommendations. The Advisory Council will discuss international activities related to Alzheimer's disease since the April meeting. The Advisory Council will discuss issues related to long-term care financing.

DATES: The meeting will be held on July 19, 2013 from 9:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held at the U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 800, Washington, DC 20201.

Comments: Time is allocated on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, Ph.D. (202) 690–7996, *helen.lamont@hhs.gov.* Note: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''July 19 meeting attendance'' in the Subject line by Friday, July 5, 2013, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: The Advisory Council will discuss the *National Plan to Address Alzheimer's Disease: 2013 Update,* and the 2013 recommendations. The Advisory Council will discuss international activities related to Alzheimer's disease since the April meeting. The Advisory Council will discuss issues related to long-term care financing.

Procedure and Agenda: This meeting is open to the public.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: June 25, 2013.

Donald Moulds,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2013–15326 Filed 6–25–13; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 8:00 a.m.–2:30 p.m., July 18, 2013.

Place: Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402; Phone: 208–523–0088; Fax: 208–522–7420.

Status: Open to the public, but without a public comment period. To access by conference call dial the following information 1(866)659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters To Be Discussed: The agenda for the Subcommittee meeting includes discussion of the following ORAU and DCAS procedures: OTIB–054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), OTIB–0055 (''Conversion from NCRP Report 38 Neutron Quality Factors to ICRP Pub. 60''), Program Evaluation Report (PER) 011 (''K–25 TBD and TIB Revisions''), PER 014 (''Construction Trades Workers''), PER 020 (''Blockson Technical Basis Document''), PER 25 (''Huntington Pilot Plant TBD Revision''), PER 031 (''Y–12 TBD Revisions''), PER 033 (''Reduction Pilot Plant TBD Revision''), PER 037 (''Ames TBD Revision''), PER 038 (''Hooker Electrochemical TBD Revision''), ORAUT–PROC–0044 (''Special Exposure Cohort''); ORAUT Report 0053 (''Stratified Co-Worker Sets); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without a public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Official, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, Telephone (513)533–6800, Toll Free 1(800)CDC–INFO, Email *dcas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–15194 Filed 6–25–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Public Meeting Times and Dates (All times are Mountain Time): 8:15 a.m.–5:00 p.m., July 16, 2013. 8:15 a.m.–5:30 p.m., July 17, 2013.

Public Comment Times and Dates (All times are Mountain Time): 5:00 p.m.–6:00 p.m.*, July 16, 2013.

*Please note that the public comment periods may end before the times indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend public comment sessions at the start times listed.

Place: Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402; Phone: 208–523–0088; Fax: 208–522–7420. Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 with a pass code of 9933701. Live Meeting *Connection: https://www.livemeeting.com/cc/cdc/join?id=MZS2ZW&role=attend&pw=ABRWH*; Meeting ID: MZS2ZW; Entry Code: ABRWH

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 150 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC petitions for: Rocky Flats Plant, Baker Brothers (Toledo, OH; 1945–1996), Pantex Plant (1951–1957, 1984–

1991), Feeds Materials Production Center (Fernald, Ohio); Site Profile reviews for: General Steel Industries, Brookhaven National Laboratory; Procedures Review Subcommittee Report; SEC Issues Work Group Report on ''Sufficient Accuracy''; Discussion of Co-Worker Dose Modeling; Idaho National Laboratory Site Profile Revisions Update; SEC Petitions Update, and Board Work Sessions.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted in accordance with the redaction policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment): (1) If a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement reveals personal information (e.g., medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the DFO that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Theodore Katz, Designated Federal Official, NIOSH, CDC, 1600 Clifton Road, MS E–20, Atlanta GA 30333, telephone: (513)533–6800, toll free: 1–800–CDC–INFO, email: *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–15193 Filed 6–25–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0730]

Agency Information Collection Activities; Proposed Collection; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requests for exemption from the Threshold of Regulation for Substances Used in Food-Contact Articles.

DATES: Submit either electronic or written comments on the collection of information by August 26, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39 (OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the FD&C Act; (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the FD&C Act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not

be the subject of a food additive listing regulation or an effective notification. The Agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 parts per billion (ppb). The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 170.39	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Threshold of regulation for substances used in food-contact articles	7	1	7	48	336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of regulation exemption requests received in the past 3 years. The annual hours per response reporting estimate of 48 hours is based on information received from representatives of the food packaging and processing industries and Agency records.

FDA estimates that approximately 7 requests per year will be submitted under the threshold of regulation exemption process of § 170.39, for a total of 336 hours. The threshold of regulation process offers one advantage over the premarket notification process for food-contact substances established by section 409(h) of the FD&C Act (OMB control number 0910–0495) in that the use of a substance exempted by the Agency is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (e.g., use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both the Agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and FDA would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Division of Dockets Management and on the Internet at *http://www.fda.gov/Food/IngredientsPackagingLabeling/PackagingFCS/default.htm.* Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the Agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: June 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–15233 Filed 6–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0575]

Draft Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics.'' The purpose of this draft guidance is to provide a single resource for information on FDA's policies and procedures related to expedited drug development and review programs. The following programs are intended to facilitate and expedite development and review of new drugs to address unmet medical need in the treatment of serious or life-threatening conditions (expedited programs): Fast track designation, breakthrough therapy designation, accelerated approval, and priority review designation.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 26, 2013. Submit either electronic or written comments concerning the proposed collection of information by August 26, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Melissa Robb, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6360, Silver Spring MD 20993–0002, 301–796–2500; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics.'' This draft guidance provides a single resource for information on FDA's policies and procedures related to the following expedited programs for serious conditions: (1) Fast track designation, (2) breakthrough therapy designation, (3) accelerated approval, and (4) priority review designation. The draft guidance describes threshold criteria generally applicable to expedited programs, including what is meant by serious condition, unmet medical need, and available therapy. This draft guidance also discusses considerations for expedited development and review such as manufacturing scale-up and inspections, long-term nonclinical toxicity studies, and review cycle clinical inspections. In addition, this guidance aligns CDER's criteria for priority review designation with CBER's criteria. Only products intended to treat a serious condition are eligible for priority review (unless otherwise eligible under specific statutory provisions).

For over 30 years, expediting the availability of promising therapies to patients with serious conditions has been a priority for FDA. With the passage of the Food and Drug Administration Safety and Innovations Act (FDASIA), FDA is expanding its efforts to expedite development and review of therapies intended to treat patients with serious conditions. This draft guidance is intended to satisfy the statutory requirements of sections 901(c)(1) and 902(b)(1)(A) of FDASIA.

Section 901(c)(1) of FDASIA requires FDA to issue draft guidance to implement amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (Enhancement of Accelerated Approval Access to New Medical Treatments) within 1 year of the date of enactment. The fast track designation, accelerated approval, and other relevant provisions of this draft guidance are intended to fulfill this requirement.

Section 902(b)(1)(A) of FDASIA requires FDA to issue draft guidance to implement requirements of section 902 (Breakthrough Therapies) within 18 months of the date of enactment. The breakthrough therapy and other relevant provisions of this draft guidance are intended to fulfill this requirement.

The provisions of this draft guidance relating to fast track development and other issues such as serious condition and unmet medical need, when finalized, will replace the current guidance for industry entitled ''Fast Track Drug Development Programs—Designation, Development, and Application Review.'' The provisions of this draft guidance pertaining to available therapy, when finalized, will replace the current guidance for industry entitled ''Available Therapy.''

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on expedited programs for serious conditions—drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Submission of Information Related to Expedited Programs for Serious Conditions—Drugs and Biologics.

Description of Respondents: Respondents to this collection of information are sponsors that develop drugs and biological products.

Burden Estimate: This draft guidance outlines FDA's policies and procedures related to the following expedited programs for serious conditions: (1) Fast track designation, including rolling review, (2) breakthrough therapy designation, (3) accelerated approval, and (4) priority review designation. In addition, this draft guidance describes threshold criteria generally applicable to expedited programs.

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 202.1, parts 314 and 601 (21 CFR parts 314 and 601), and sections 505(a), 506(a)(1), 735, and 736 of the FD&C Act (21 U.S.C. 355(a), 356(a)(1), 379g, and 379h) have been approved under OMB control numbers 0910–0686, 0910–0001, 0910–0338, 0910–0014, and 0910–0297.

This draft guidance proposes the following new collections of information:

Priority Review Designation Request. The draft guidance describes that a sponsor may expressly request priority review of an application. Based on information from FDA's databases and information available to FDA, we estimate that approximately 47 sponsors will prepare and submit approximately 1 priority review designation submission in accordance with the draft guidance and that the added burden for each submission will be approximately 30 hours to develop and submit to FDA as part of the application (totaling 1,410 hours).

Breakthrough Therapy Designation Request. The draft guidance describes the process for sponsors to request breakthrough therapy designation in an

application. Based on information available to FDA, we estimate that approximately 24 sponsors will prepare approximately 1 breakthrough therapy designation submission in accordance with the draft guidance and that the added burden for each submission will be approximately 70 hours to prepare and submit (totaling 1,680 hours).

Promotional Materials for Accelerated Approval Under Part 314. The draft guidance describes section 506(c)(2)(B) of the FD&C Act and FDA's accelerated approval regulations (§§ 314.550 and 601.45). These provisions authorize FDA to require sponsors to submit copies of all promotional materials to the Agency for consideration prior to their dissemination. The regulations provide that copies of all promotional materials including promotional labeling as well as advertisements intended for dissemination or publication within 120 days following marketing approval must be submitted to FDA during the preapproval period. The regulations further provide that after 120 days following marketing approval, unless otherwise informed by the Agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement. Currently, FDA has OMB approval for the submission of copies of all promotional materials under part 601 (OMB control number 0910–0338) but does not have approval for the submission of copies of all promotional materials under part 314.

Based on information from FDA's databases and information available to FDA, we estimate that approximately 20 sponsors will submit promotional materials for accelerated approval 7 times annually in accordance with § 314.550 and that the burden for each submission will be approximately 120 hours (a total of 16,800 hours).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Draft guidance on expedited programs	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Priority Review Designation Request	47	1	47	30	1,410
Breakthrough Therapy Designation Request	24	1	24	70	1,680
Promotional Materials for Accelerated Approval Under § 314.550	20	7	140	120	16,800
Total					19,890

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: June 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–15250 Filed 6–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 2, 2013, from 10 a.m. to approximately 1:30 p.m.

Location: National Institutes of Health, Building 29, Conference Room A/B, 9000 Rockville Pike, Bethesda, MD 20892. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room.

Contact Person: Bryan Emery or Pearline Muckelvene, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, HFM–71, Rockville, MD 20852, 301–827–0314, email: *Bryan.Emery@fda.hhs.gov* or *Pearline.Muckelvene@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the advisory committee information line, or visit our Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* to learn about possible modifications before coming to the meeting.

Agenda: On August 2, 2013, the Committee will meet in open session to hear updates on the research programs of the Laboratory of Molecular Virology, Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background

material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: On August 2, 2013, from 10 a.m. to approximately 1 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 26, 2013. Oral presentations from the public will be scheduled between approximately 12 noon and 1 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 18, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 19, 2013.

Closed Committee Deliberations: On August 2, 2013, from approximately 1 p.m. to 1:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the site visit report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery or Pearl Muckelvene at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 21, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–15239 Filed 6–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Predicting Age of Onset of Niemann-Pick Disease

Description of Technology: Niemann-Pick disease (NPD) refers to a group of fatal inherited metabolic disorders. Children with type A or B NPD usually die within the first few months or years of life, while NPD type C progresses more slowly, and affected individuals may survive into their seventies. The lifespan of patients with NPD is related to the age of onset. At present, however, there is no effective diagnostic method to predict the age of NPD disease onset.

The instant invention presents diagnostic compositions and efficient methods for predicting the age of onset of a lysosomal storage disease (e.g., NPD) and of diseases associated with lysosomal of autophagic defects (e.g., Parkinson's disease and Alzheimer's disease) in patients. It can also be used to screen for agents useful in treating NPD patients.

Potential Commercial Applications:

- Predicting the age of disease onset in patients with Niemann-Pick disease, and other diseases associated with lysosomal or autophagic defects.
- Identifying agents for treating NPD patients.

Competitive Advantages: A new method for predicting the age of NPD disease onset.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vitro data available.

Inventors: William J. Pavan, et al. (NHGRI).

Intellectual Property: HHS Reference No. E–060–2013/0—U.S. Provisional Application No. 61/781,807 filed 14 Mar 2013.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*.

Collaborative Research Opportunity: The National Human Genome Research Institute (NHGRI) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize diagnostic methods for predicting the age of onset of lysosomal disorders, such as NPD and Parkinson's. For collaboration opportunities, please contact Dr. William J. Pavan at *bpavan@nhgri.nih.gov*.

Rat Model for Alzheimer's Disease

Description of Technology: The present invention is directed to a transgenic rat model of Alzheimer's Disease (AD) termed TgF344–19+/−. The invention rat overexpresses two human genes (APPswe and PS1ΔE9 genes), each of which are believed to be independent dominant causes of early-onset AD. The hemizygote exhibits major features of AD pathology (i.e., dense and diffuse amyloid plaques, neurofibrillary tangles, cerebral amyloid angiopathy, hyperphosphorylated tau, paired-helical filaments, Hirano bodies, granulovacuolar degeneration, cognitive impairment, and cortical neuronal loss).

The invention rat is superior to AD mice models because the rat has a larger sized brain to accommodate *in vivo* imaging studies and complex behavioral

testing. Further, the invention rat has a longer life span so that studies of longer duration or studies involving serial sampling can be conducted. The invention rat can be used to evaluate potential treatments for AD and to further investigate AD physiology.

Potential Commercial Applications:

• In vivo validation of AD therapeutics.

• Development and validation of imaging methods to diagnose AD.

• Detailed investigation of AD pathology and physiology.

Competitive Advantages:

• Rat model in contrast to available mice models.

• Rat model based on over-expression of genes responsible for early onset AD.

Development Stage:

• Prototype.

• In vivo data available (animal).

Inventors: Robert M. Cohen, et al. (NIMH).

Publication: Borchelt DR, et al. Familial Alzheimer's disease-linked presenilin 1 variants elevate Abeta1–42/1–40 ratio in vitro and in vivo. Neuron. 1996 Nov; 17(5):1005–13. [PMID 8938131]

Intellectual Property: HHS Reference No. E–211–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *nguyenantczakla@mail.nih.gov*.

Prognostic Biomarkers for Patients With Early Stage Lung Cancer

Description of Technology: Investigators at the National Cancer Institute have discovered a set of biomarkers that can identify patients with early stage lung cancer who have a high risk of relapse. Available for licensing are prognostic assays based on these biomarkers, which can enable clinicians to select more effective therapy and post-operative follow-up strategies.

Surgery is the standard care for patients with stage I lung cancer. Despite successful surgery, 20–30% of patients will relapse. Chemotherapy can improve patient survival; however, it is controversial if early stage cancer patients should be treated with chemotherapy since, for many cases, it will harm quality of life with little therapeutic benefit. Utilizing patient samples, the investigators conducted a retrospective study in eight patient cohorts that validated the gene classifier set. These prognostic methods can guide physicians to select appropriate treatment and follow-up while sparing other patients of unnecessary treatment and negative side-effects of chemotherapy.

Potential Commercial Applications:

• Method to determine the prognosis of patients with lung cancer.

• Method to select more effective treatment and post-operative follow-up for patients with early stage lung cancer.

Competitive Advantages: Assays were validated in human tissue samples and eight different patient cohorts.

Development Stage:

• Early-stage.

• In vivo data available (human).

Inventors: Curt Harris (NCI), Aaron Schetter (NCI), Ichiro Akagi (Nippon Medical School), and Hirokazu Okayama (Fukushima Medical University).

Publication: Akagi I, et al. Combination of protein coding and non-coding gene expression as a robust prognostic classifier in stage I lung adenocarcinoma. Cancer Res. 2013 May 2; Epub ahead of print. [PMID 23639940]

Intellectual Property: HHS Reference No. E–048–2012/0—U.S. Provisional Application No. 61/691,118 filed 20 Aug 2012.

Related Technology: HHS Reference No. E–181–2006/0—U.S. Patent Nos. 7,943,318 and 8,377,637 and Australian Patent No. 2007205234, and related patent applications pending in Australia, Canada, China, Europe, Japan and the U.S.

Licensing Contact: Jennifer Wong, M.S.; 301–435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize an early detection test for lung cancer. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Retroviral and Lentiviral Vectors To Increase Efficiency of Inducible Pluripotent Stem Cell (iPSC) Production

Description of Technology: Researchers at the National Cancer Institute have discovered that modulating a specific p53 isoform increases the number of inducible pluripotent stem cells that can be obtained from cells that are being re-programmed to obtain pluripotent cells. It is known that the activity of p53 regulates the self-renewal and pluripotency of normal and cancer stem cells, and also affects re-programming efficiency of iPS cells. This p53 isoform-based technology provides a more natural process of increasing iPS cell production than previous methods of decreasing p53.

Potential Commercial Applications:

• Stem cell-based regenerative medicine.

• Cancer therapeutic that targets cancer stem cells.

Competitive Advantages: The retroviral and lentiviral vectors in this invention allow more selective control of p53 activities than siRNA or mutant p53 methods.

Development Stage: Early-stage.

Inventors: Curtis C. Harris (NCI) et al.

Intellectual Property: HHS Reference No. E–239–2010/0—

• U.S. Provisional Patent Application No. 61/389,134 filed 01 Oct 2010.

• International Patent Application PCT/US2011/054304 filed 30 Sep 2011, which published as WO/2012/044979 on 05 Apr 2012.

• Australian Patent Application 2011308567 filed 30 Sep 2011.

• US Patent Application No. 13/877,100 filed 29 Mar 2013.

• Applications also pending in CA, EP, JP (filing nos. unknown).

Related Technologies:

• HHS Reference No. E–033–2008/0—Therapeutic Applications of a p53 Isoform in Regenerative Medicine, Aging, and Cancer.

• HHS Reference No. E–137–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Patrick McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Human Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Retroviral and Lentiviral Vectors. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Dated: June 20, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–15204 Filed 6–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of Applications on HIV–AIDS/Alcohol Comparative Effectiveness & Implementation Research (RFA AA 13–003, 004).

Date: July 30–31, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, 5635 Fishers Lane, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852 (301) 451–2067, *srinivar @mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: June 19, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15203 Filed 6–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Dermatology.

Date: July 22, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychological Health, Development and Aging.

Date: July 22, 2013.

Time: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dana Jeffrey Plude, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pilot Clinical Studies in Nephrology and Urology.

Date: July 23–24, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational Research in Diabetes and Obesity.

Date: July 24, 2013.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mental Disorders and Addiction.

Date: July 24, 2013.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Jay Joshi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Biodemography of Aging.

Date: July 24, 2013.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 20, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15198 Filed 6–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic and Skeletal Biology.

Date: July 8–9, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Resource Center: Translational/Developmental Proteomics.

Date: July 10–12, 2013.

Time: 6:00 p.m. to 12:00 p.m.

Contact Person: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 20, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15199 Filed 6–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, July 08, 2013, 12:00 p.m. to July 08, 2013, 02:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W030, Rockville, MD, 20850 which was published in the **Federal Register** on May 23, 2013, 78FR30933.

The meeting notice is amended to change the meeting room, date and time of the meeting to Room 7W110, July 24, 2013, 1:00 p.m.–2:30 p.m. The meeting is being held as a teleconference. The meeting is closed to the public.

Dated: June 20, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15200 Filed 6–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI National Clinical Trials Network.

Date: July 19, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Peter J. Wirth, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, 7W514, MSC 9750, Bethesda, MD 20892–9750, 240–276–6434, *pw2q@nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group Subcommittee A—Cancer Centers.

Date: August 8–9, 2013.

Time: 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gail J. Bryant, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, 7W114, MSC 9750, Bethesda, MD 20892–9750, 240–276–6346, *gb30t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 20, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15201 Filed 6–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, July 23, 2013, 10:00 a.m. to July 23, 2013, 04:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 5W030, Rockville, MD, 20850 which was published in the **Federal Register** on May 23, 2013, 78FR30933.

The meeting notice is amended to change the start time and meeting room from 10:00 a.m. to 4:00 p.m., Room 5W030 to 9:00 a.m. to 4:00 p.m., Room 2W904 on July 23, 2013. The meeting is being held as a teleconference. The meeting is closed to the public.

Dated: June 20, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15202 Filed 6–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet on July 15, 2013, from 9:00 a.m. to 4:30 p.m.; July 16, 2013, from 9:00 a.m. to 4:00 p.m.; and July 17, 2013, from 9:00 a.m. to 2:00 p.m. E.D.T. The DTAB will convene in both open and closed sessions over these three days.

On July 15, 2013, from 9:00 a.m. to 4:30 p.m., the meeting will be open to the public. The meeting will include updates on the previously announced DTAB recommendations, the Federal Custody and Control Form, the DTAB's process for evaluating the scientific

supportability of the hair specimen for federal workplace drug testing, a historical perspective of hair as a drug testing matrix, and the current perspective of the hair specimen drug testing, including specimen characteristics, collection, preparation, and stability; drug analytes, analyte stability, and analyte cutoffs; initial and confirmatory testing methodologies; proficiency testing; best practices experiences; and hair drug testing data.

The public is invited to attend the open session in person or to listen via web conference. Due to the limited seating space and call-in capacity, registration is requested. Public comments are welcome. To register, make arrangements to attend, obtain the web conference call-in numbers and access codes, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Advisory Committees Web site at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx* or contact the CSAP DTAB Designated Federal Official, Dr. Janine Denis Cook (see contact information below).

On July 16, 2013, from 9:00 a.m. to 4:00 p.m. and July 17, 2013, from 9:00 a.m. to 2:00 p.m., the Board will meet in closed session to discuss proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Therefore, this portion of the meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees Web site, *http://www.nac.samhsa.gov/DTAB/meetings.aspx,* or by contacting Dr. Cook.

Committee Name: Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention Drug Testing Advisory Board.

Dates/Time/Type: July 15, 2013, from 9:00 a.m. to 4:30 p.m. E.D.T.: Open. July 16, 2013, from 9:00 a.m. to 4:00 p.m. E.D.T.: Closed. July 17, 2013, from 9:00 a.m. to 2:00 p.m. E.D.T.: Closed.

Place: Seneca and Rock Creek Conference Rooms, SAMHSA Office Building, 1 Choke Cherry Road, Rockville, Maryland 20857.

Contact: Janine Denis Cook, Ph.D., Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Choke Cherry Road, Room 7–1043, Rockville, Maryland 20857, *Telephone:* 240–276–2600, *Fax:* 240–276–2610, *Email: janine.cook@samhsa.hhs.gov.*

Janine Denis Cook,

Designated Federal Official, DTAB, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2013–15230 Filed 6–25–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5684–N–04]

60-Day Notice of Proposed Information Collection: Notice of Proposed Information Collection for Disaster Recovery Grant Reporting System; Public Comment Request

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: August 26, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: LaRuth Harper, Department of Housing and Urban Development, 451 7th Street SW., Room 7233, Washington, DC 20410.

Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance at (202) 708–3587. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

A. Overview of Information Collection

Title of Information Collection: Disaster Recovery Grant Reporting System—Revision to add Hurricane Sandy and other Disaster Grants.

OMB Approval Number: 2506–0165.

Type of Request: Revision of a currently approved collection.

Form Number: SF–424 Application for Federal Assistance.

Description of the need for the information and proposed use: The Disaster Recovery Grant Reporting (DRGR) System is a grants management system used by the Office of Community Planning and Development to monitor special appropriation grants under the Community Development Block Grant program. This collection pertains to Community Development Block Grant Disaster Recovery (CDBG–DR) and Neighborhood Stabilization Program (NSP) grant appropriations.

The CDBG program is authorized under Title I of the Housing and Community Development Act of 1974, as amended. Following major disasters, Congress appropriates supplemental CDBG funds for disaster recovery. According to Section 104(e)(1) of the Housing and Community Development Act of 1974, HUD is responsible for reviewing grantees' compliance with applicable requirements and their continuing capacity to carry out their programs. Grant funds are made available to states and units of general local government, Indian tribes, and insular areas, unless provided otherwise by supplemental appropriations statute, based on their unmet disaster recovery needs.

Respondents (i.e. affected public): DRGR is used to monitor CDBG–DR, NSP, and NSP–TA grants, as well as several programs that do not fall under the Office of Block Grant Assistance.

Separate information collections have been submitted and approved for these programs. CDBG–DR and NSP grant funds are made available to states and units of general local government, Indian tribes, and insular areas, unless provided otherwise by supplemental appropriations statute. NSP–TA grant funds are awarded on a competitive basis and are open to state and local governments, as well as non-profit groups and consortia that may include for-profit entities.

Estimated Number of Respondents: Community Development Block Grant Disaster Recovery (CDBG–DR) Grants: The system has approximately 72 open CDBG disaster recovery grants in DRGR. HUD estimates an additional 40 grants as a result of the recent supplemental appropriation for Hurricane Sandy relief.

One-time only submissions: The one-time only pre- and post-award submissions for the estimated 40 new DRSI grants resulting from Hurricane Sandy include standard forms, DRGR Action Plan, and required financial control documentation. Total hours are estimated at 505 at a cost of $12,164.

Recurring submissions: Recurring submissions include quarterly progress reports and voucher submissions. For average-sized grants, the Department estimates 13 minutes needed per voucher. CDBG–DR grantees process approximately 19 vouchers per year. This requires a record keeping and reporting burden of approximately 4 hours per grantee, per year. Larger CDBG–DR grantees take approximately 44 minutes for each voucher and submit an average of 146 vouchers per year, resulting in approximately 106 burden hours per year, per grantee. Therefore, all CDBG–DR grantees collectively spend an estimated 2,721 hours submitting vouchers in the DRGR system for a total estimated annual voucher submission cost of $65,575. Average-sized grantees spend an estimated 9 hours on each QPR, for a total of 3,240 hours. Large grantees spend an estimated 57 hours per QPR for a total of 5,016 hours. Therefore, all grantees collectively spend an estimated 8,256 hours per year submitting QPR data in DRGR. Total annual QPR submissions cost an estimated $198,970.

Neighborhood Stabilization Program Grants: For the 577 active NSP grants in the DRGR system, the Department estimates 11 minutes per voucher submission. NSP grantees process approximately 34 vouchers per year. This requires a record keeping and reporting burden of approximately 3,899 hours for an annual voucher submission cost of $93,970. NSP grantees spend an estimated 4 hours per QPR submission, for a total of 9,232 hours for a total annual QPR submission costs $222,491.

Neighborhood Stabilization Program 3—Technical Assistance Grants: The DRGR system currently has 10 open NSP3–TA grants. Historical data on voucher and QPR submissions for technical assistance grants were extremely limited at the time this collection was being assembled. Therefore, the times used to calculate NSP grant cost burden will be applied to NSP3–TA grant cost burden. For 10 average-sized grants, the Department estimates 11 minutes per voucher. Grantees process approximately 38 vouchers per year. Total burden hours for all grantees over the course of the year is estimated at 380, for a total annual submission cost of $1,648.

10 average-sized grantees spend approximately 4 hours submitting each QPR, for a total of 160 hours over the course of a year. Total annual QPR submission costs approximately $3,856.

Status of the proposed information collection: This notice precedes a continuation of the existing burden hour request.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 20, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2013–15305 Filed 6–25–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO–921000–L51100000–GA0000–LVEMC1300020; COC–75916]

Notice of Availability of the Environmental Assessment and Notice of Public Hearing for the Bowie Resources, LLC, Federal Coal Lease Application, COC–75916, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Notice of Public Hearing.

SUMMARY: In accordance with Federal coal management regulations, the Bowie Resources, LLC, Federal Coal Lease-By-Application (LBA) Environmental Assessment (EA) is available for public review and comment. The Bureau of Land Management (BLM) Colorado State Office will hold a public hearing to receive comments on the EA, Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources for Bowie Resources, LLC, serial number COC–75916.

DATES: The public hearing will be held on July 18, 2013 at 6 p.m. Written comments should be received no later than July 29, 2013.

ADDRESSES: The public hearing will be held at the Paonia Town Hall, 214 Grand Avenue, Paonia, CO 81428. Written comments should be sent to Desty Dyer at BLM Uncompahgre Field Office, 2465 South Townsend Ave, Montrose, CO 81401 or delivered via email to *ddyer@blm.gov* or fax to 970–240–5367. Copies of the EA and the unsigned Finding of No Significant Impact (FONSI) are available at the field office address above.

FOR FURTHER INFORMATION CONTACT: Kurt M. Barton at 303–239–3714, *kbarton@blm.gov;* or Desty Dyer at 970–240–5302, *ddyer@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM received an LBA filed by Bowie Resources, LLC, on October 18, 2012. The coal resource to be offered has limited surface access and is limited to coal recoverable by underground mining methods. The Federal coal is located on lands outside established coal production regions and may supplement the reserves at the Bowie II Mine. The Federal coal resources are located in Delta County, Colorado.

Sixth Principal Meridian

T. 12 S., R. 91 W., 6th P.M.,
Sec. 31, lots 11 to 26, inclusive;
Sec. 32, lots 10 to 15, inclusive.
T. 12 S., R. 92 W., 6th P.M.,
Sec. 36, S½.
T. 13 S., R. 91 W., 6th P.M.,
Sec. 5, lots 2, 3, 4, 10, and 11, W½W½NE¼NE¼, NW¼NE¼, NE¼SW¼NE¼, SE¼SW¼NE¼, N½NW¼SW¼NE¼, N½NW¼, N½N½SE¼NW¼, E½NW¼SE¼, W½W½NE¼SE¼, N½NE¼NE¼SE¼, and NE¼NW¼NE¼SE¼;
Sec. 6, lots 1 to 4, inclusive.
T. 13 S., R. 92 W., 6th P.M.,
S

These lands contain 1,789.20 acres, more or less.

The EA addresses the cultural, socioeconomic, environmental and cumulative impacts that would likely result from leasing these coal lands. Two alternatives are addressed in the EA:

Alternative 1: (Proposed Action) The tracts would be leased as requested in the application; and

Alternative 2: (No Action) The application would be rejected or denied. The underground Federal coal reserves would be bypassed.

Proprietary data marked as confidential may be submitted to the BLM in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on the EA, unsigned FONSI, FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Comments on the EA, FMV and MER should address, but not necessarily be limited to, the following:

1. The quality and quantity of the coal resources;

2. The method of mining to be employed to obtain MER of the coal, including specifications of the seams to be mined, timing and rate of production, restriction to mining and the inclusion of the tracts in an existing mining operation;

3. The FMV appraisal including, but not limited to, the evaluation of the tract as an incremental unit of an existing mine, quality and quantity of the coal resource, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, the mining method or methods, and any comparable sales data on similar coal lands. The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Written comments on the EA, MER and FMV should be sent to Desty Dyer at the above address or via email prior to close of business [date to be provided by the CO DSD]. Please note ''Coal Lease By Application'' in the subject line for all emails. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The foregoing is published in the **Federal Register** pursuant to 43 CFR parts 3422 and 3425.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2013–15267 Filed 6–25–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Call for Nominations: North Slope Science Initiative, Science Technical Advisory Panel, Alaska

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice.

SUMMARY: This notice announces a call for nominations to serve on the North Slope Science Initiative, Science Technical Advisory Panel, in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972, as amended.

DATES: All nominations and required attachments must be received no later than 30 days after the publication of this notice.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, 907–271–3431 or email *jpayne.blm.gov*.

SUPPLEMENTARY INFORMATION: The legislative purpose of the North Slope Science Initiative, Science Technical Advisory Panel is to advise the North Slope Science Initiative Oversight Group on issues such as identifying and prioritizing inventory, monitoring and research needs, and providing other scientific information as requested by the Oversight Group (Section 348, Energy Policy Act of 2005, Pub. L. 109–58). The Oversight Group membership includes the Alaska Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Ocean Energy Management and National Marine Fisheries Service; the Bureau of Land Management Alaska State Director; the Commissioners of the Alaska Departments of Natural Resources and Fish and Game; the Mayor of the North Slope Borough; and the President of Arctic Slope Regional Corporation. Advisory members of the Oversight Group include the Regional Executive, U.S. Geological Survey; Deputy Director, U.S. Arctic Research Commission; Alaska Regional Director, National Weather Service; and the Regional Coordinator for the National Oceanographic and Atmospheric Administration.

The Science Technical Advisory Panel consists of a representative group of not more than 15 scientists and technical experts from diverse professions and interests, including the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, wildlife management organizations, and academia, as determined by the Secretary of the Interior. The members are selected from among, but not limited to, the following disciplines: North Slope traditional and local knowledge, landscape ecology, petroleum engineering, civil engineering, geology, sociology, cultural anthropology, economics, ornithology, oceanography, fisheries, marine biology, landscape ecology, and climatology.

Duties of the Science Technical Advisory Panel are solely advisory to the Oversight Group, which will provide direction regarding priorities for decisions needed for the management of resources on the North Slope of Alaska and the adjacent marine environment. Duties could include, but are not limited to, the following:

a. Advise the Oversight Group on science planning and relevant inventory, monitoring and research projects necessary for management decisions;

b. Advise the Oversight Group on scientific information relevant to the mission of the North Slope Science Initiative;

c. Review selected reports and advise the Oversight Group on their content and relevance;

d. Review ongoing scientific programs of the North Slope Science Initiative member organizations at the request of the membership to promote compatibility in methodologies and compilation of duties;

e. Advise the Oversight Group on how to ensure scientific products generated through the North Slope Science Initiative activities are of the highest technical quality;

f. Provide scientific advice as requested by the Oversight Group; and,

g. Coordinate with groups, committees and sub-committees as requested by the Oversight Group.

Qualifications and Procedures Required for Nomination

All membership will consist of individuals having a minimum of 5 years of work experience in the Arctic in their field of expertise. Individuals will be selected from among, but not limited to, those disciplines and entities described above. Any individual or organization may nominate one or more persons, including themselves, to serve on the Science Technical Advisory Panel. Six new members will be appointed for 3-year terms. Current Science Technical Advisory Panel appointees may be reappointed for additional terms at the discretion of the Secretary of the Interior. Under current Administration policy, federally registered lobbyists may not serve on the panel.

How To Nominate

Nomination forms may be obtained from the North Slope Science Initiative Web site (*http://www.northslope.org*), or from the Executive Director, North Slope Science Initiative (see For Further Information Contact, above). To make a nomination, or self-nominate, submit a completed nomination form with a minimum of one letter of reference that describes the nominee's qualifications to serve on the Science Technical Advisory Panel. The professional discipline the nominee would represent should be identified in the reference letter of nomination and in the nomination form. Nominees may be scientists and technical experts from diverse professions and interests, including, but not limited to, the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, or academia. Nominees appointed to serve on the Science Technical Advisory Panel will serve only in their professional capacity and will not serve to represent any group, agency or entity with whom they may be affiliated. The Executive Director, North Slope Science Initiative, will collect the nomination forms and letters of reference and distribute them to the Oversight Group for consideration. The collective recommendations of the Oversight Group will be submitted to the Secretary of the Interior who has the responsibility for making appointments. Members of the Science Technical Advisory Panel will serve without monetary compensation, but will be reimbursed for travel, lodging and per diem expenses to participate in announced meetings.

Authority: 43 CFR 1784.4–1.

Bud C. Cribley,

State Director.

[FR Doc. 2013–15268 Filed 6–25–13; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–EFMO–13214; PPMWMWROW2/ PPMPSAS1Y.YP0000]

Notice of Availability of a Record of Decision on the Final General Management Plan/Environmental Impact Statement, Effigy Mounds National Monument, Iowa

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Final General Management Plan/ Environmental Impact Statement (GMP/ EIS), Effigy Mounds National Monument (Monument), Iowa.

ADDRESSES: Copies of the ROD are available by request by writing to Superintendent, Effigy Mounds National Monument, 151 Highway 76, Harpers Ferry, Iowa 52146–7519. The document is also available on the internet at the NPS Planning, Environment, and Public Comment Web site at: *http://www.parkplanning.nps.gov/efmo*.

FOR FURTHER INFORMATION CONTACT: Superintendent James Nepstad at the address above, by telephone at 563–873–3491 or email at *jim_nepstad@nps.gov*.

SUPPLEMENTARY INFORMATION: The NPS has issued a ROD for the Final GMP/ EIS; on May 29, 2013, the Regional Director for the Midwest Region approved the ROD. As soon as practicable, the NPS will begin to implement the selected alternative, which was identified as the preferred alternative (Alternative B) in the EIS.

In the preferred alternative, a large portion of the Monument would be zoned as backcountry, a virtual research center would be created to collect and share information on mound research and preservation, and access to the South Unit of the Monument would be improved by connecting the Yellow River bridge and trail to the trails in the South Unit. This alternative was also determined to be the environmentally preferable alternative. The preferred alternative and two others were analyzed in the GMP/EIS.

In reaching its decision to select the preferred alternative, the NPS considered the purposes for which the Monument was established, and other laws and policies that apply to lands within the Monument. The NPS also carefully considered public comments received during the planning process.

To determine the preferred alternative, the planning team evaluated three draft alternatives that had been reviewed by the public. To minimize the influence of individual biases and opinions, the team used an objective analysis process called ''Choosing by Advantages.'' Alternative B best preserves the outstanding representative examples of significant phases of prehistoric Indian moundbuilding cultures in the American Midwest and the wildlife and natural values within the Monument, two of the three purposes for which the Monument was established. Alternative B also achieves this higher level of protection through the management zoning and more limited trail development. Finally, Alternative B provides broader access to mound research and digitized portions of the collections through the development of the virtual research center, thereby better fulfilling the third purpose (scientific study and appreciation) for which the Monument was established.

Dated: May 24, 2013.

Michael T. Reynolds,

Regional Director, Midwest Region.

[FR Doc. 2013–15265 Filed 6–25–13; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–12863; PPPWSAJHA0 PPMPSAS1Z.Y00000]

Approval of Record of Decision for Relocation of Cattle Point Road, San Juan Island National Historical Park, San Juan County, Washington

AGENCY: National Park Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement for the relocation of the Cattle Point Road at San Juan Island National Historical Park. The requisite no-action ''wait period'' was initiated on October 5, 2012, with the Environmental Protection Agency's

publication of the **Federal Register** notice of the filing of the Final EIS.

Decision: As soon as practical San Juan Island National Historical Park will begin to implement design and initiate construction of the Cattle Point Road relocation project, in concert with the Federal Highway Administration and San Juan County. Duration of the construction phase is expected to last approximately two years. The park will undertake construction as detailed in the *Preferred Alternative* (Alternative B) in the Final EIS (which includes realignment of 4,950 feet of roadway approximately 300 feet upslope of the current location, which will subsequently be restored to a natural appearance). There are no substantive changes from the course of action as presented in the Draft EIS. The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures are included in the approved project. Both a No Action alternative and two additional alternatives were identified and analyzed in the Draft and Final EIS. Alternative B was deemed to be the ''environmentally preferred'' course of action.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, San Juan Island National Historical Park, Box 429, Friday Harbor, Washington, 98250 or via telephone request at (360) 378–2240.

Dated:April 17, 2013.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2013–15122 Filed 6–25–13; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

Notice of Proposed Information Collection; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. The information collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, the public should submit comments to OMB by July 26, 2013, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_submission@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0117 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to approve the collection of information for 30 CFR Part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is displayed in 30 CFR 778.8 (1029–0117).

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on April 2, 2013 (78 FR 19734). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OMB Control Number: 1029–0117.

Summary: Section 507(b) of Public Law 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to ensure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 338 Surface coal mining permit applicants and 24 State regulatory authorities.

Total Annual Responses: 3,223.

Total Annual Burden Hours: 9,119.

Send comments on the agency need for the collection of information to perform its mission; the accuracy of our burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the **ADDRESSES** section. Please refer to OMB control number 1029–0117 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 18, 2013.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2013–15328 Filed 6–25–13; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR–5600–FA–36]

Announcement of Funding Awards for the Rural Capacity Building for Community Development and Affordable Housing Program Fiscal Year 2012

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the 2012 Notice of Funding Availability (NOFA) for the Rural Capacity Building for Community Development and Affordable Housing Program. This announcement contains the names of the award recipients and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Tasleem Albaari, Program Analyst, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7228, Washington, DC 20410, telephone number 202–402–7346. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Relay Service on 800–877–TTY, 800–877–8339, or 202–402–7346. Telephone number, other than ''800'' TTY numbers are not toll free.

SUPPLEMENTARY INFORMATION: HUD's Rural Capacity Building for Community Development and Affordable Housing Program is authorized by the Consolidated and Continuing Appropriations Act of 2012 (Pub. L. 112–55). The Rural Capacity Building Program provides grants to national organizations with expertise in rural housing and community development to enhance the capacity and ability of local governments, Indian tribes, housing development organizations, rural community development corporations (CDCs) and community housing development organizations (CHDOs) to carry out community development and affordable housing activities that benefit low- and moderate-income families and persons in rural areas. Rural Capacity Building Program funds can be used to provide the following activities:

- Technical assistance, training, support, and advice to develop the business and administrative capabilities of rural community-based housing development organizations, CDCs, CHDOs, local governments, and Indian tribes;
- Loans, grants, or other financial assistance to rural community-based housing development organizations, CDCs, CHDOs, and local governments in addition to Indian tribes to carry out community development and affordable housing activities for low- and moderate-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities that create jobs for low-income persons; and
- Such other activities as may be determined by the grantees in consultation with the Secretary or his or her designee.

The Fiscal Year 2012 competition was announced on December 20, 2012 on *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa12/ruralcapbldg.* The NOFA provided $5 million for Rural Capacity Building grants For the Fiscal Year 2012 competition, HUD awarded four competitive Rural Capacity Building grants totaling $5 million.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: June 17, 2013.

Frances Bush,

Deputy Assistant Secretary for Operations Office of Community Planning and Development.

Appendix A

FISCAL YEAR 2012 FUNDING AWARDS FOR RURAL CAPACITY BUILDING FOR COMMUNITY DEVELOPMENT AND AFFORDABLE HOUSING PROGRAM GRANTS

No.	State	Award recipient	Award
1	DC	Housing Assistance Council	$3,042,188
2	AL	Collaborative Solutions, Inc	782,465
3	MN	Minnesota Housing Partnership	675,347
4	CA	Rural Community Assistance Corporation	500,000
Total			5,000,000

[FR Doc. 2013–15307 Filed 6–25–13; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–885]

Certain Portable Electronic Communications Devices, Including Mobile Phones and Components Thereof; Institution of Investigation Pursuant to United States Code

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 23, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Nokia Corporation of Finland and Nokia Inc., of Sunnyvale, California. A supplement to the Complaint was filed on June 12, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable electronic

communications devices, including mobile phones and components thereof, by reason of infringement of certain claims of U.S. Patent No. 6,035,189 (''the '189 patent''); U.S. Patent No. 6,373,345 (''the '345 patent''); U.S. Patent 6,711,211 (''the '211 patent''); U.S. Patent No. 7,187,945 (''the '945 patent''); U.S. Patent No. 8,140,650 (''the '650 patent''); and U.S. Patent No. 8,363,824 (''the '824 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 20, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable electronic communications devices, including mobile phones and components thereof, by reason of infringement of one or more of claims 8, 10, and 11 of the '189 patent; claims 1–12 of the '345 patent; claims 26–27, 29–31, 50–53, and 56–57 of the '211 patent; claims 1–7, 12–14, 19, 27, and 31 of the '945 patent; claims 1–8, 10–15, and 17–18 of the '650 patent; and claims 1–4, 7, 11–12, and 17–19 of the '824 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Nokia Corporation, Keilalahdentie 2–4, FIN–00045 Nokia Group, Espoo, Finland;

Nokia Inc., 200 South Mathilda Avenue, Sunnyvale, CA 94086.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

HTC Corporation, 23 Xinghua Road, Taoyuan City, Taoyuan County 330, Taiwan;

HTC America, Inc., 13920 SE Eastgate Way, Suite 400, Bellevue, WA 98005.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: June 21, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–15236 Filed 6–25–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Consent Decree Under the Clean Air Act

On June 11, 2013, the Department of Justice lodged a proposed Modification to the Consent Decree with the United States District Court for the District of Maryland in the lawsuit entitled *United States* v. *American Sugar Refining, Inc.* Civil Action No. JKB–12–1408.

The Consent Decree in this Clean Air Act enforcement action against American Sugar Refining, Inc. (''ASR'') resolves allegations by the Environmental Protection Agency, asserted in a complaint filed together with the Consent Decree, under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged environmental violations at ASR's sugar refinery in Baltimore, Maryland. In addition to the payment of a $200,000 civil penalty, the settlement required ASR to perform injunctive relief to reduce emission of nitrogen oxides (NO_X), including installing ultra low-NO_X burners and meeting certain emission rate limits.

The proposed Modification to the Consent Decree provides additional time for ASR to install one of the ultra low-NO_X burners and requires that ASR collect and submit certain data regarding NO_X emissions. Further, the proposed Modification to the Consent Decree requires an additional reduction in annual NO_X emissions.

The publication of this notice opens a period for public comment on the proposed Modification to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *American Sugar Refining, Inc.,* D.J. Ref. 90–5–2–1–09801.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email ...	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Modification to the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Modification to the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $0.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–15243 Filed 6–25–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–39]

David A. Ruben, M.D.; Decision and Order

On February 7, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to David A. Ruben, M.D. (hereinafter, Respondent), of Tucson, Arizona. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, which authorizes him to dispense controlled substances as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that his ''continued registration is inconsistent with the public interest.'' ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f) and 824(a)(4)).

More specifically, the Show Cause Order alleged that between April 9 and June 6, 2008, two cooperating sources (CS), who posed as patients, made four visits to Respondent's office seeking controlled substances. *Id.* The Order further alleged that at each visit, Respondent issued the CSs prescriptions for schedule II controlled substances without performing a physical examination, without taking a medical history, without reviewing or obtaining any medical records or test results, and without providing a diagnosis. *Id.* at 1–2. The Order thus alleged that Respondent lacked ''a legitimate medical purpose'' and acted ''outside of the usual course of professional practice'' in issuing the prescriptions and thus violated both federal and state law. *Id.* at 1 (citing 21 CFR 1306.04(a); Ariz. Rev. Stat. § 32–1401(27)(ss)).

The Show Cause Order further alleged that on June 10, 2010, the Arizona Medical Board (AMB or Board) issued an order which found that Respondent had ''deviated from the standard of care in [his] treatment of multiple patients from 2006 to early 2009.'' *Id.* at 2. The Show Cause Order alleged that the AMB found that Respondent ''[f]ail[ed] to perform adequate examinations/evaluations prior to prescribing controlled substances''; that he ''[f]ailed to develop an adequate treatment plan prior to prescribing controlled substances''; that he ''[f]ailed to perform tests and assessments to confirm diagnoses and the necessity of treatment with controlled substances''; that he ''[f]ailed to obtain or review patients' medical records''; that he ''[f]ailed to offer patients adjunct treatments that included non-controlled substances and/or physical therapy''; that he ''[f]ailed to address patients' aberrant drug seeking behaviors''; and that he ''[f]ailed to address or investigate patients' abnormal urinalysis results.'' *Id.* The Show Cause Order further alleged that based on these findings, the AMB had barred Respondent ''from prescribing, administering or dispensing any opioids for a period of one year.'' *Id.*

On March 28, 2011, Respondent requested an extension of time to respond to the Show Cause Order, which was unopposed by the Government. ALJ Ex. 2. The matter was then placed on the docket of the Office of Administrative Law Judges (ALJ) and assigned to ALJ Wing. While the ALJ initially denied Respondent's request because neither party had established the date of service, on March 30, 2011, Respondent filed a Request for Reconsideration, which was also unopposed by the Government, and which showed that Respondent had not been served until February 25, 2008.[1] ALJ Exs. 3 & 4. While Respondent sought an additional thirty days to respond to the Order to Show Cause, on April 1, 2011, the ALJ granted Respondent one additional week to do so. ALJ Ex. 5.

On April 7, 2011, Respondent requested a hearing on the allegations. ALJ Ex. 6. Following pre-hearing procedures, the ALJ conducted a hearing in Phoenix, Arizona on January 10–12, 2012, at which both parties elicited the testimony of multiple witnesses and introduced various exhibits into the record. Following the hearing, both parties submitted briefs containing their proposed findings of fact, conclusions of law, and argument.

Thereafter, the ALJ issued his Recommended Decision (hereinafter, cited at R.D.). Therein, the ALJ found that the Government had ''established by substantial evidence a *prima facie* case that Respondent has committed acts inconsistent with the public interest between 2006 and 2009.'' R.D. at 65. However, the ALJ further found that ''Respondent has fully accepted responsibility for his past misconduct and credibly demonstrated that he will not engage in future misconduct.'' *Id.*

With respect to factor one—the recommendation of the state licensing board—the ALJ found that while Respondent currently has a valid Arizona medical license, he has twice been the subject of disciplinary action by the AMB, which found that he had engaged in '' 'unprofessional conduct,' '' as well as '' 'any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public. ''' R.D. at 47 (quoting Ariz. Rev. Stat. § 32–1401(27)(q)). In addition, the ALJ found that Respondent had also committed unprofessional conduct by '' 'failing or refusing to maintain adequate records on a patient.' '' *Id.* (quoting Ariz. Rev. Stat. § 32–1401(27)(e)). However, because in August 2011, the AMB had fully restored Respondent's prescribing privileges, the ALJ concluded that while not dispositive, the Board's action ''weigh[s] against a finding that Respondent's continued registration subject to conditions would be inconsistent with the public interest.'' *Id.* at 48.

With respect to factor three—Respondent's conviction record under federal and state laws relating to the manufacture, distribution, or dispensing of controlled substances—the ALJ noted

[1] Notwithstanding of the date of the Show Cause Order, Respondent's request was timely because the Order was not served until February 25, 2008, and the thirtieth day period for filing his request fell on a Sunday.

that there was no evidence that Respondent has been convicted of such an offense. R.D. at 48. The ALJ thus concluded that while this factor is also not dispositive, it weighed against a finding that Respondent's ''registration would be inconsistent with the public interest.'' *Id.*

The ALJ then considered the evidence with respect to factors two—Respondent's experience in dispensing controlled substances—and four—Respondent's compliance with federal, state, and local laws relating to controlled substances—together. With regard to the allegation that Respondent had ''deviated from the standard of care in [his] treatment of multiple patients from 2006 to early 2009,'' the ALJ noted that the Government's evidence ''rested primarily on the findings by the Board in the 2009 Agreement and 2010 Order'' and that the Government had offered ''[n]o evidence in the form of patient charts or related medical expert testimony'' in either its case-in-chief or in rebuttal of the testimony offered by Respondent and his expert witness. *Id.* at 49–50.

However, the ALJ noted that the 2009 AMB Order found that between ''November 17, 2006 and October 2007[,] 'Respondent deviated from the standard of care by prescribing high dose opioids to DK without proper indications . . . [and] by failing to timely use objective measures, such as urine drug tests, to assess DK's compliance with her treatment even after he was aware of her cocaine addiction.' '' R.D. at 50. The ALJ further found that the 2010 AMB order ''established that Respondent's care and treatment of eleven patients . . . on various dates between 2006 and September 2009, constituted unprofessional conduct contrary to Ariz. Rev. Stat. § 32–1401(27)(e) and (q).'' *Id.* The ALJ then noted some, but not all, of the specific findings made by the AMB with respect to the various patients. *Id.* at 50–51.

With respect to the Board's findings, the ALJ further found that Respondent testified ''that he did not agree with all of the Board's findings with regard to the 2009 Agreement, but otherwise agreed with the sanctioning imposed by the Board.'' *Id.* at 53. With respect to the 2010 AMB order, the ALJ found that ''Respondent credibly testified . . . that he agreed from a regulatory standpoint why the Board censured him, but disagreed with some of the specific factual findings.'' *Id.*

Based on the two AMB orders, the ALJ nonetheless concluded that ''Respondent issued controlled substance prescriptions to multiple patients . . . for other than a legitimate medical purpose and outside the usual course of professional practice in violation of applicable state and federal law.'' *Id.* at 54–55 (citing 21 CFR 1306.04(a); Ariz. Rev. Stat. § 32–1401(27)(a), (e), and (q)). However, the ALJ rejected the Government's allegation based on the four visits of the two CSs, finding that Respondent ''credibly testified'' regarding his treatment of them, and that his testimony was ''supported by patient files.'' *Id.* at 56. In addition, the ALJ noted that Respondent's Expert credibly testified that his prescribing to the two CSs was '' 'well within the standard of care.' '' *Id.* (quoting Tr. 618).

The ALJ further found that Respondent had presented evidence of ''more recent conduct'' [which] weigh[s] significantly'' in his ''favor.'' *Id.* at 60. More specifically, the ALJ noted that Respondent testified that he had been in compliance with the AMB's Order, that he had ''successfully completed'' the one year suspension of his authority to prescribe opioids, and that there was no evidence that he ''has not been fully compliant with state and federal law since the 2010 Order.'' *Id.* Moreover, the ALJ noted Respondent's evidence that he had made improvements in his controlled-substance prescribing practices since the 2010 Order. *Id.*

Thus, the ALJ found that the Government had demonstrated that ''Respondent's prescribing practices and compliance with applicable state and federal law between 2006 and 2009 was inconsistent with the public interest'' and supported a finding that his ''continued registration would be inconsistent with the public interest, at least as of 2010.'' *Id.* at 63. However, the ALJ further found ''that Respondent's recent positive improvements in his prescribing practices and compliance with applicable state and federal law weigh in [his] favor.'' *Id.*

As for factor five—such other conduct which may threaten public health and safety—the ALJ noted that the Government had not alleged, and the evidence did not support a finding that Respondent had engaged in ''any 'other conduct' . . . that is inconsistent with the public interest.'' *Id.* at 64. The ALJ then found that Respondent ''ha[d] credibly accepted responsibility for his past misconduct,'' explaining that ''Respondent testified at various points that he acknowledged and accepted the Board's disciplinary actions.'' *Id.* Also noting the evidence as to Respondent's efforts to improve his prescribing practices, the ALJ concluded that factor five supported ''a finding that Respondent's continued registration would be consistent with the public interest.'' *Id.* at 65.

The ALJ thus concluded that Respondent had rebutted the Government's *prima facie* case. *Id.* He then recommended that Respondent's registration be continued and that any pending applications be renewed subject to two conditions: 1) that Respondent ''comply with all of the terms and conditions specified in the'' AMB's June 2010 order, and 2) that ''Respondent shall promptly forward to the DEA regional office any changes to the terms and conditions of his probation.'' *Id.* at 65–66.

The Government filed Exceptions to the R.D. Thereafter, the record was forwarded to me for Final Agency Action.

Having considered the entire record, I adopt the ALJ's finding that Respondent committed acts which were inconsistent with the public interest during the 2006 through 2009 time period. While I also accept the ALJ's finding that Respondent has accepted responsibility for his misconduct and produced substantial evidence of various remedial measures he has implemented, I nonetheless reject the ALJ's recommended sanction because the ALJ failed to consider both the egregiousness of the violations and the Agency's interest in deterring similar misconduct by Respondent in the future as well as on the part of others. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009).

The ALJ's Rulings on the Government's Motion in Limine To Exclude Evidence

Before proceeding to make factual findings, a discussion of the ALJ's ruling on the Government's Motion in Limine To Exclude Evidence is warranted. During the course of the pre-hearing procedures, Respondent provided notice that he intended to call several physicians to testify, in part, regarding their review of the medical charts of those patients which were the subject of the AMB's 2009 and 2010 orders. ALJ Ex. 46. Respondent also provided notice that he intended to introduce into evidence various letters written by these physicians based on their review of various patient charts which were reviewed by the AMB and discussed in the two orders. *Id.*

Relevant to the Government's motion, Respondent proffered Dr. Jennifer Schneider to testify that she had reviewed the medical charts of patients LP, WO, JF, JR, CJ, ML, AM, MF, DD, and SS, all of which were reviewed by the AMB's consultant as part of the Board's investigation. ALJ Ex. 9, at 5 (Resp. Prehearing Statement). Respondent further proffered that Dr.

Schneider ''will explain that the AMB consultant had missed items in the charts for which Respondent was inaccurately criticized.'' *Id.* Finally, Respondent proffered that Dr. Schneider ''will testify in conformance with information about [Respondent] and Pain Management practices in Arizona in general as the author of Proposed Exhibits 4, 5, and 6.'' *Id.*

Respondent also proffered the testimony of Dr. Bennet Davis to ''testify regarding his review of a chart involving patient DK and his review and evaluation of patient ML, who has a complex set of issues.'' *Id.* Respondent further proffered that Dr. Davis would testify that, ''[i]n his opinion, the AMB consultant did not properly define the standard of care for which Respondent was issued a reprimand per [the 2009] Consent Agreement,'' and that Respondent adhered to a 'reasonable standard [of] care in all aspects of treating . . . [DK].' '' *Id.* at 5–6. Respondent also proffered that ''Dr. Davis was able to synthesize his own evaluation and compare it with the notes and records provided by Respondent [and] will testify that Respondent met the standard of care in his evaluation of Respondent's chart of ML.'' *Id.* at 6.

Finally, Respondent proffered the testimony of Dr. Kevin Goeta-Kreisler, who was to ''explain that . . . he reviewed the complaints and the charts on patients 'AL, KF, and JF.' '' *Id.* Respondent further proffered that Dr. Goeta-Kreisler ''will testify that he and Respondent both agreed that the early charting was 'insufficient for another practitioner to assume continuity of the patients' care' even though the documentation met the standard of practice at the earlier time.'' *Id.*

Thereafter, the Government filed a motion in limine to exclude this evidence, arguing that ''[t]he doctrine of *res judicata* bars the relitigation of the factual findings and conclusion of law of the prior proceedings before the AMB.'' Motion in Limine to Exclude Evidence (ALJ Ex. 46, at 3). The Government argued that ''[e]ach of Respondent's proposed experts' testimony and their [sic] related documentary evidence . . . are [sic] an attempt to relitigate the factual findings and conclusions of law by the AMB,'' and therefore, ''Respondent should be precluded from presenting such evidence.'' *Id.* As support for its position, the Government cited numerous authorities, including cases of both federal and state courts and the Agency. *See id.* (citing *Misischia v. Pirie,* 60 F.3d 626, 629–30 (9th Cir. 1995); *Marie Y. v. General Star Indem. Co.,* 2 Cal. Rptr. 3d 135, 155 (Cal. Ct. App. 2003); *Robert L. Dougherty,* 76 FR 16823, 16830 (2011); *Alan H. Olefsky,* 76 FR 20025, 20031 (2011); *Christopher Henry Lister,* 75 FR 28068, 28069 (2010).

Respondent opposed the motion on multiple grounds. *See* ALJ Ex. 47. More specifically, Respondent argued: (1) That the motion was untimely, *id.* at 1–2; (2) that the AMB Orders were the result of consent agreements, which stated that his ''admissions are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding,'' and that he ''never agreed that all of the conduct set forth in the findings was accurate,'' *id.* at 2–3; and (3) that DEA could not invoke the doctrine of *res judicata* because it was not a party to the consent agreements and was not in privity with the AMB. *Id.* at 4–5.

The ALJ denied the Government's motion for two reasons. First, noting that the Government had not filed its motion until approximately eight months after Respondent had provided notice as to its witnesses and their anticipated testimony, the ALJ held that the Government had not established good cause for the untimely filing of the motion. ALJ Ex. 48, at 2–3. Second, the ALJ held that because the Agency was not a party to the proceeding before the AMB, and the AMB did not consider the issue of whether Respondent's DEA registration should be revoked under the public interest standard, the doctrine of *res judicata* could not be invoked to bar the introduction of the proposed testimony and reports. *Id.* at 3–4. However, the ALJ further noted that his ruling was ''not intended to limit the parties from making evidentiary objections at the time the evidence is offered.'' *Id.* at 4 n.3.[2]

As for the first of the ALJ's reasons, the Agency's regulations clearly grant the ALJ authority ''to take all necessary action to avoid delay.'' 21 CFR 1316.52. Moreover, this regulation provides that the ALJ ''shall have all powers necessary to these ends, including (but not limited to) the power to . . . [r]eceive, rule on, exclude, or limit evidence.'' *Id.* § 1316.52(f). This power clearly includes the authority to set reasonable time periods for the filing of motions. Given that the Government's motion was filed eight months late, the Government's motion was clearly untimely.

However, notwithstanding that the motion was untimely, the ALJ considered it on the merits. Moreover, after the parties filed their respective prehearing statements, the ALJ clearly was aware that the Government intended to introduce the AMB Orders and that Respondent intended to challenge the validity of their findings. Indeed, on June 24, 2011, Respondent filed a motion to preclude the Government from introducing the two AMB Orders. *See* ALJ Ex. 20. Thus, even though the Government did not raise issue in its response to Respondent's motion to preclude, the ALJ was obligated (and remained so throughout the proceeding) to apply the law of the Agency. Accordingly, the ALJ should have raised, *sua sponte,* the issue of whether the findings of the AMB Orders were entitled to preclusive effect.[3] I therefore conclude that it is appropriate to consider whether the ALJ's ruling on the merits was correct.

While the ALJ correctly noted that the Agency has applied the doctrine of *res judicata* in proceedings brought under 21 U.S.C. 823 and 824, he then misapplied Agency precedent. To be sure, the application of *res judicata* itself requires that the parties in the subsequent proceeding be the same parties (or privies of the parties) in the earlier proceedings and that the proceedings involve the same claim. However, this Agency has also long held that the doctrine of collateral estoppel precludes a party from re-litigating adverse findings rendered against him in either a state board proceeding or a federal/state judicial proceeding.[4] *See*

[2] Taking the ALJ at his word, throughout the proceeding, the Government made numerous objections to the testimony of several of Respondent's witnesses (as well as the admission of several documents authored by the aforementioned physicians) asserting that various AMB findings were in error, including its findings as to what the standard of care required at the time he treated the patients who were the subject of the Board's Orders. *See* Tr. 578, 591, 596, and 603.

[3] Under Agency regulations, at the hearing, the ALJ ''shall admit only evidence that is competent [and] relevant.'' 21 CFR 1316.59(a). If, as the Government argues, such evidence was barred by the doctrine of *res judicata* (or more precisely, collateral estoppel) the admission of such evidence was a violation of the above regulation.

[4] While the Government argued that ''[t]he doctrine of *res judicata* bars the relitigation of the factual findings and conclusions of law of the prior proceedings before the AMB,'' ALJ Ex. 46, at 3, as the above passage (as well as other portions of its motion) made clear, it actually sought to invoke collateral estoppel against the Respondent. *See also id.* (quoting *Marie Y.* v. *General Star Indem. Co.,* 2 Cal. Rptr. 3d 135, 155 (Cal. Ct. App. 2003) (''When an administrative agency acts in a judicial capacity to resolve disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, its decision will collaterally estop a party to the proceeding from relitigating those issues.''). As further support for its position, the Government cited Section 29 of the *Restatement (Second) of Judgments. See id.* Notably, this section is entitled ''Issue Preclusion in Subsequent Litigation With Others.''

Continued

Robert L. Dougherty, 76 FR 16823, 16830–31 (2011); *Robert A. Leslie,* 60 FR 14004, 14005 (1995). Contrary to the ALJ's misunderstanding, the Agency was not required to be a party or privy of a party in the AMB proceedings to collaterally estop Respondent from re-litigating the findings of the AMB Orders.[5] So too, that the State Board proceeding did not involve the same claim as this proceeding (whether Respondent's registration is consistent with the public interest), does not preclude the Agency from relying on those findings of the Board which are relevant and material to the Agency's public interest determination.

While not addressed by the ALJ, Respondent argued that both of the AMB Orders were based upon consent agreements, which included the following clause:

> All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and the Respondent. Therefore, said admissions are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding.

ALJ Ex. 47, at 2 (quoting GX Ex. 17, at 2 (2009 AMB Order) and GX 18, at 20–21 (2010 AMB Order). Respondent argues that he ''and his counsel had to consider whether there was a reasonable basis to conclude that there was at least some evidence that would lead to a conclusion that some of the allegations made would be sustained.'' *Id.* He contends that ''[h]e bargained for and received an agreement to enter each of these consent agreements, on the basis of that recognition, on his agreement that he would indeed follow the requirements of any discipline authorized as a result of the Agreement, but that outside of the required discipline set forth, the stated findings and conclusions could not be used in a non-AMB proceeding, including a 'federal government regulatory agency proceeding[,]' such as this one.'' *Id.* at 2–3. Respondent further argues that he ''never agreed that all of the conduct set forth in the findings was accurate,'' and that both he and the AMB ''agreed that [his] concessions there were not to be given substantive weight outside of the Arizona professional proceedings.'' *Id.* at 3.

In the 2010 Order, however, Respondent also ''agree[d] not to contest the validity of the Findings of Fact and Conclusions of Law contained in the Order in any present or future administrative proceedings before the Board (or any other state agency in the State of Arizona, concerning the denial or issuance of any license or registration required by the state to engage in the practice or any business or profession.)'' GX 18, at 20. Moreover, he also ''voluntarily relinquishe[d] any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge th[e] Order in its entirety as issued by the Board, and waive[d] any other cause of action related thereto or arising from said Order.'' *Id.* Finally, he agreed that the ''Order is a public record that will be publicly disseminated *as a formal disciplinary action of the Board* and will be reported to the National Practitioner's Data Bank and on the Board's Web site as a disciplinary action.'' *Id.* at 21 (emphasis added).

Likewise, the 2009 Order provided that ''[b]y entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as used by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.'' GX 17, at 1. Also, the 2009 Order provided that ''[t]his Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent,'' and that upon its approval and signing, was ''a public record that will be publicly disseminated as a formal action of the Board'' which would be reported to the National Practitioner's Data Bank and on the AMB's Web site. *Id.* at 1–2.

Respondent does not contend that he lacked a full and fair opportunity to litigate the allegations that were the subject of the 2009 and 2010 Orders. And while both Orders were the result of consent agreements in which the findings were not actually litigated, the Supreme Court of Arizona has explained that even where a judgment has been entered by stipulation or consent, it ''may be conclusive, with respect to one or more issues, if the parties have entered an agreement manifesting such intention.'' *Chaney Building Co.,* v. *City of Tuscon,* 716 P.2d 28, 30 (Ariz. 1986) (en banc) (citing *Restatement (Second) of Judgments* § 27 comment e).[6] *See also Gilbert v. Ben-Asher,* 900 F.2d 1407, 1410 (9th Cir. 1990) (''Arizona law permits a judgment by stipulation to 'be conclusive . . . if the parties have entered an agreement manifesting such intention.'''') (quoting *Chaney,* 716 P.2d at 30); *Restatement (Second) of Judgments* § 8.3.

Here, both AMB Orders constitute formal disciplinary actions of the Board; their findings and legal conclusions were the basis for the sanctions which the AMB imposed on Respondent. Most significantly, the parties agreed that Respondent could not ''contest the validity of the Findings of Fact and Conclusions of Law contained in the [2010] Order in any present or future administrative proceedings before the Board,'' as well as in a proceeding before ''any other state agency in the State of Arizona, concerning the denial or issuance of any license or registration required by the state to engage in the practice or any business or profession.'' So too, Respondent agreed that he could not challenge any portion of either Order in the state or federal courts. Thus, notwithstanding that both AMB Orders were the result of consent agreements, it is clear that the parties agreed that the findings of fact and

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While in his ruling, the ALJ noted that ''the Agency has stated that 'the doctrine of *res judicata* bars the relitigation of the findings of the [state medical board]'s final order,' '' ALJ Ex. 48 at 4 n.2 (quoting *Dougherty,* 76 FR at 16830), he then ''declined to extend this dicta [sic] to the facts in the present case for the reasons discussed above.'' *Id.* Contrary to the ALJ's understanding, the passage in *Dougherty* was not a dictum but rather a holding, as the Agency's decision relied on numerous findings of the state medical board's order in support of its finding that Respondent had committed acts which rendered his registration inconsistent with the public interest and squarely rejected the physician's attempts to relitigate the state board's findings. *See* 76 FR at 16831. As I explained:

> All of Respondent's testimony could have been, and should have been presented in the MBC proceeding. Here again, it is clear that Respondent is simply trying to relitigate the findings of the MBC proceeding. Having failed to establish that the MBC proceeding did not provide him with a full and fair opportunity to litigate these issues, the doctrine of *res judicata* precludes Respondent from relitigating them in this proceeding.

Id. Thus, contrary to the ALJ's reasoning, there was no dictum ''to extend'' but only a holding to apply; his reasons for ignoring Agency precedent reflect a fundamental misunderstanding of the differences between claim preclusion and issue preclusion.

[5] As support for his reasoning, the ALJ also cited the Agency decision in *Robert Raymond Reppy,* 76 FR 61154, 61159–60 (2011), noting that the decision ''refus[ed] to apply *res judicata* because, although a prior Agency decision was a final judgment on the merits, the respondent was not a party to the prior litigation.'' ALJ Ex 48, at 3. The ALJ ignored, however, the fundamental difference between *Reppy* and this matter, that being that the Government sought preclusion against Dr. Reppy based on findings made in a matter involving the pharmacy for which he worked, and did so notwithstanding that he was not a party to the pharmacy's proceeding. By contrast, here the Government seeks preclusion against Respondent based on findings made in a proceeding in which he was a party.

[6] Indeed, in *Chaney,* the Supreme Court of Arizona explained that even where parties stipulate to a dismissal, if the parties ''intended the . . . dismissal to be binding as to certain factual issues, and if their intention was reflected in the dismissal, we would enforce the intent of the parties and collateral estoppel would apply.'' 716 P.2d at 30 (citing James, *Consent Judgments as Collateral Estoppel,* 108 U. Pa. L. Rev. 173, 192 (1959)).

conclusions of law contained in them, were not subject to relitigation between Respondent and the Board.

As for Respondent's contention that ''the stated findings and conclusions could not be used in a non-AMB proceeding,'' ALJ Ex. 47, at 3, the 2010 Order itself expressly provided that it could be used in administrative proceedings brought by other Arizona agencies. GX 18, at 20. And as for his contention that he and the AMB agreed that his admissions were ''not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding,'' Respondent cites no authority to support the proposition that he and the State can dictate to an Agency of the United States that it cannot give the same effect to the factual findings and legal conclusions as would exist in a subsequent state administrative proceeding.[7] *Cf. Howlett* v. *Rose,* 496 U.S. 356, 371 (1990) (*citing FERC* v. *Mississippi,* 456 U.S. 742, 776 n.1 (1982) (opinion of O'Connor, J.) (''State may not discriminate against federal causes of action'')); U.S. Const. art. VI, cl. 2. Accordingly, I hold that the ALJ erred by failing to give preclusive effect to the factual findings and legal conclusions of the two AMB Orders.[8]

Findings of Fact

Respondent is the holder of a DEA Certificate of Registration, which authorizes him to dispense controlled substances in schedules II through V as a practitioner at the registered address of 2016 South 4th Avenue, Tucson, Arizona. GX 1, at 1. Respondent's registration was due to expire on April 30, 2011, *id.;* however, on March 16, 2011, Respondent submitted a renewal application. GX 2. Because Respondent has timely submitted a renewal application, I find that Respondent's registration has remained in effect pending the issuance of this Decision and Final Order. *See* 5 U.S.C. 558(c).

Respondent is also the holder of a license to practice allopathic medicine in the State of Arizona. GX 18, at 1. Respondent holds board certifications from the American Board of Psychiatry and Neurology, the American Board of Child and Adolescent Psychiatry, American Board of Addiction Medicine, and the American Board of Pain Medicine. Tr. 802–03.

The State Board Proceedings

The 2009 AMB Order

Respondent first came to the attention of the AMB, after DF, a Tucson area pharmacist, filed a complaint with the Board regarding Respondent's issuance of an OxyContin prescription to DK in October 2007.[9] Tr. 68–69. DF testified that he had received and filled prescriptions which Respondent had issued for OxyContin for patients who were participants in the Arizona Health Care Cost Containment System (AHCCS), the State's Medicaid Program. *Id.* at 55. DF further testified that while OxyContin was not covered by AHCCS, Respondent's prescriptions would, based on the ''quantity and strength . . . cost in the neighborhood of $2,000 per month,'' and yet the ''the patient would pay cash.'' *Id.* at 56–57. Moreover, even when DF ''offered the generic, which was significantly less money, [Respondent's] patients demanded the brand name'' OxyContin and paid cash.[10] *Id.* at 57.

As for the quantity and strength of Respondent's prescriptions, DF testified that ''some of'' them were for ''the highest milligram strength, 80 milligrams,'' with a dosing instruction to take ''multiple tablets of that strength more frequently than was substantiated in the literature.'' *Id.* Based on his ''knowledge of prescribing practices of other physicians writing the same medications,'' DF found the quantities to be ''very excessive.'' *Id.*

In October 2007, DK presented a prescription issued by Respondent for 210 tablets of OxyContin 80mg, with a dosing instruction to take one tablet up to seven times per day. *Id.* at 64. DF testified that the dosing instruction was ''totally outside of the literature and the general accepted prescribing practice for that medication,'' *id.* at 65, because OxyContin is a sustained-release product which is typically taken every twelve hours, and at most every eight hours, and taking the drug every two hours ''would lead to a blood level that could be dangerous.'' *Id.* at 76.

Accordingly, the prescription ''prompted [DF] to call the doctor's office to verify that the prescription was written correctly.'' *Id.* at 65. However, when DF called Respondent's office, the latter's office manager told him that Respondent ''refuses to speak to pharmacists.'' *Id.* at 66. DF told the office manager that he wanted to know where Respondent ''got the pharmacokinetics information that would support'' the dosing interval and that he ''was not going to fill the prescription until [he] spoke with'' Respondent. *Id.* While DF made at least two phone calls regarding the prescription, Respondent did not speak with him. *Id.* at 67.

Respondent eventually faxed a letter to DF stating that ''OxyContin 80mg per day is the patient's prescription dose. She is being monitored for plain [sic] & compliance. We will continue to prescribe as appropriate for the lowest dose, which meets her pain needs. We also expect politeness in communication.'' RX 29, at 2; Tr. 67. In response, DF hand wrote a note on the fax, which he then faxed back:

> 7 times per day is *not appropriate* by anyone's measure[.] We will no longer fill prescriptions under your name. Board of Medical Examiners and DEA will be notified. We will not help maintain an addiction. You are confusing firmness with impoliteness, and appropriate therapy with inappropriate therapy.

RX 29, at 2; Tr. 68.

Consistent with his note, DF instructed the pharmacists he supervised not to fill Respondent's prescriptions and reported the incident to the AMB. Tr. 70. Respondent then called DF; during the conversation, DF related that Respondent's office manager had stated that he refused to speak with pharmacists. *Id.* at 90. Respondent maintained that he ''never directed his

[7] Nor is it even clear why the agreement's language that ''[a]ll admissions made by Respondent are solely for final disposition of this matter'' and ''said admissions are not intended or made for any other use,'' should preclude this Agency from giving collateral estoppel effect to the Board's factual findings and legal conclusions. Notably, the Board did not agree that its factual findings and legal conclusions were not entitled to preclusive effect in other proceedings; indeed, Respondent agreed that he could not contest the validity of the Board's factual findings and legal conclusions in other Arizona administrative proceedings. Rather, the above quoted language states only that Respondent's *admissions* were not intended for use in other proceedings. Notably, in his opposition to the Government's motion, Respondent did not identify any factual findings in the two Orders which were based on his admissions.

[8] As has been made clear in several agency decisions, even where the factual findings and legal conclusions of a state board order are not subject to relitigation, a respondent is entitled to argue whether those findings and legal conclusions also establish violations of federal laws and regulations, as well as whether those violations are sufficiently egregious to support the Government's proposed sanction. So too, even where the factual findings and legal conclusions of a state board order are entitled to preclusive effect, a respondent is still entitled to put on evidence as to his/her acceptance of responsibility and remedial measures. *See Robert L. Dougherty,* 76 FR 16823, 16830 (2011).

[9] At the time of the hearing, DF had been a pharmacist for twenty-nine years and had been appointed as the Assistant Director of Pharmacy for a major grocery chain in Arizona, and was responsible for supervising 43 pharmacies. Tr. 50–51. He had also previously served for twelve years as a Pharmacy Manager for the same chain and for four years as the District Pharmacy Manager for the chain's stores in southern Arizona. *Id.* at 52.

[10] Several other pharmacists also testified to instances in which Respondent's patients presented similar OxyContin prescriptions, turned down generics, and paid large sums of cash notwithstanding that they were on AHCCS. *See* Tr. 153–54 (testimony of NB); *id.* at 180–81 (testimony of WL).

office manager to say that.'' *Id.* DF asked Respondent if it ''didn't raise a red flag with him that [patients] were paying cash and demanding the brand name and that they were on AHCCCS,'' and presumably ''could not afford $2,000.00 a month for these medications?'' *Id.* at 63. Respondent replied, ''Well how do you know their family isn't paying for it?'' *Id.* DF stated that if he was paying for a family member's prescription ''that cost that much money, I would demand that they got the generic so I wasn't spending that much money for it,'' and then asked Respondent if this didn't ''raise a big red flag to you that they're selling it on the street.'' *Id.* at 63–64. Respondent ''disregarded [DF's] concerns and really had no response to that.'' *Id.* at 64. Respondent also stated that many of his patients requested brand name drugs because generics were less effective. *Id.* at 106.

DF and Respondent also discussed the dosing instruction on DK's prescription, with Respondent telling DF that DK was taking two tablets, three times a day, and one tablet at night. *Id.* at 102. In response, DF told Respondent ''that that is not the way the prescription is written and [that] for a pharmacist to fill a prescription with directions that are not indicative of . . . the doctor's true intent . . . would be unethical and unprofessional.'' *Id.* While DF recalled discussing drug ''tolerance as a general principal,'' he further told Respondent ''the standard practice for pain control with a sustained release product . . . was to use an immediate release product to help with . . . breakthrough [pain] and not to simply increase'' the dosing of the sustained release drug. *Id.* at 103. DF also testified that Respondent asserted that the medication was providing what appeared to be adequate pain relief to DK. *Id.*

With respect to DK, the AMB conducted an investigation. GX 17, at 4. Thereafter, Respondent and the AMB entered into a consent agreement, pursuant to which he stipulated to certain findings of fact and conclusions of law. *Id.* at 1. Therein, the Board made the following findings of fact:

> 4. On November 17, 2006, DK first presented to Respondent through self-referral complaining of lower back pain and psychiatric issues. DK reported her current pain management medications as OxyContin, Oxycodone, Valium, and Paxil. DK also reported having imaging studies and x-rays done three years prior to her visit. Although Respondent requested at this first meeting and four times subsequently that DK provide him with her medical records and film, she did not comply until December, 2007. At this first visit, Respondent prescribed OxyContin and Valium at the reported doses and increased the Oxycodone dosage from the reported dosage. Subsequently, Respondent prescribed medications on a monthly basis and in December 2006, he added Wellbutrin for increasing depression. Respondent did not obtain urine drug tests to monitor compliance before June 2008, or order additional testing to identify the source of DK's pain.
>
> 5. On August 29, 2007, Respondent provided DK with early refills of OxyContin and Oxycodone, although he decreased the Oxycodone dosage.
>
> 6. On October 19, 2007, Respondent saw DK and a family member, who both insisted that DK was compliant with her treatment. Respondent then wrote DK her usual opioid prescriptions. However, later that day, Respondent received written documentation from another patient that DK was recently discharged from the care of another physician for violating a pain agreement. Respondent subsequently took appropriate measures in an attempt to prevent DK from filling the prescription he had written earlier that day.
>
> 7. Respondent later learned from the other provider that DK had tested positive for cocaine and Methadone (which was not prescribed to her). Respondent referred DK to Behavioral Health for substance abuse issues, but he continued to prescribe opiates to DK for her back pain. Further, Respondent continued to prescribe opiates to DK after he learned that she had successfully completed inpatient opioid detoxification.
>
> 8. The standard of care requires a physician to base new or continuing high dose opioid prescriptions for a self-referred, chronic pain management patient (who reports currently being prescribed high dose opioid medications) on proper indications, including previous medical records and verified previous prescriptions, and/or contact with the previous prescribing physician.
>
> 9. Respondent deviated from the standard of care by prescribing high dose opioids to DK without proper indications.
>
> 10. The standard of care when treating a chronic pain patient who has a known or suspected substance abuse problem is to utilize objective measures to monitor compliance.
>
> 11. Respondent deviated from the standard of care by failing to timely use objective measures, such as urine drug tests, to assess DK's compliance with her treatment even after he was aware of her cocaine addiction.
>
> 12. As a result of Respondent's conduct, DK might have suffered an accidental overdose resulting in respiratory depression, aspiration, brain damage, or death. In addition, Respondent's inappropriate prescribing might have . . . perpetuated DK's aberrant drug seeking and addiction.

Id. at 4–5.

Based on the above findings, the Board concluded that ''[t]he conduct and circumstances described above constitute unprofessional conduct pursuant to'' Ariz. Rev. Stat. § 32–1401(27)(q), a provision which encompasses ''[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.'' *Id.* at 6. The Board issued Respondent a reprimand and placed him on probation for one year, subject to several conditions, including that he take 15–20 hours of Continuing Medical Education in pain management; that he pay the Board's administrative costs; and that he obey all federal, state and local laws and regulations ''governing the practice of medicine.'' *Id.* at 6–7. In addition, the conditions provided that the ''Board staff or its agents shall conduct periodic chart reviews,'' and that based on the reviews, ''the Board may retain jurisdiction to take additional disciplinary or remedial action.'' *Id.* at 6.

After entering into the 2009 agreement, Respondent requested that Dr. Bennet E. Davis, M.D., President of the Pima County Medical Society Pain Working Group review the consent agreement. RX 8, at 4. Therein, Dr. Davis took issue with several of the AMB's findings, specifically findings 8, 9, and 11.

As set forth above, in findings number 8 and 9, the AMB found that in the case of ''a self-referred, chronic pain management patient (who reports currently being prescribed high dose opioid medications),'' the standard of care requires that a physician base the prescription ''on proper indications, including previous medical records and verified previous prescriptions, and/or contact with the previous prescribing physician,'' and that Respondent failed to do so. With respect to these findings, Dr. Davis asserted that the Board was applying a standard of care which ''does not reflect the actual standard of care in the state of Arizona, nor in the community in which [Respondent] practices medicine,'' but rather a standard which ''reflects an ideal which is not achievable in reality.'' *Id.*

As for finding number 11, in which the Board found that Respondent deviated from the standard of care by failing to timely use objective measures, such as urine drug tests, to assess DK's compliance with her treatment, even after he was aware of her cocaine addiction, Dr. Davis asserted that the Board's finding ''appears to have no basis in fact.'' *Id.* Dr. Davis then opined that even ''if it did, it would not reflect actual standard of care in the community in which [Respondent] practices medicine because the use of urine screening in pain medicine is an area of some controversy and consequently wide latitude must be given to practitioners.'' *Id.*

The short answer to these contentions is that the AMB is the expert agency entrusted under Arizona law with authority to determine ''if a doctor of

medicine has engaged in unprofessional conduct or provided incompetent medical care.'' Ariz. Rev. Stat. § 32–1403(A)(2). *See also id.* § 32–1403(A) (''The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state.''). Under Arizona law, eight of the Board's twelve members must ''be actively practicing medicine,'' and ''[e]ach doctor of medicine who is appointed to the board [must] have been a resident of this state and actively engaged in the practice of medicine as a licensed physician for at least the five years before appointment.'' *Id.* § 32–1402(A) and (B).

Respondent could have presented this evidence to the Board, but did not. Most significantly, to even entertain such evidence undermines fundamental values of federalism. As *Gonzales* v. *Oregon* makes clear, ''[t]he structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the States' police powers.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 279 (2006). Where, as here, a state medical board has determined that a practitioner's conduct violated the standard of care, its findings of fact and conclusions of law are not subject to relitigation before the Agency. Rather, the only question is whether those findings also establish whether a practitioner has committed acts which render his registration inconsistent with the public interest within the meaning of the CSA.

With respect to DK, Respondent testified that he recognized the AMB's criticism of his failure to get her records ''originally.'' Tr. 850–51. Indeed, other than a then-five year old MRI, which DK did not produce until more than a year after she had begun seeing Respondent and which had negative findings (*see* RX 30, at 11), Respondent did not obtain any records from DK's prior treating physicians, notwithstanding that at the first visit, Respondent noted in his evaluation that ''[h]er most recent treatment has been OxyContin 160 mg t.i.d. (three times a day) and oxycodone 30 mg two tablets, one to two times daily which she currently takes. She also takes Valium, 10mg. one p.o. at h.s.'' RX 30, at 40.[11] Respondent maintained, however, that:

> There was a dilemma in obtaining her records. We asked many times and our option—the only option I saw available to us if she would not tell us or remember who she had seen in the past, was to fire her. And I felt, as I answered before, that she was a multiple diagnosed patient and that would be to her detriment and would be poor medical care. So I decided though she could not remember or give us the name or produce records, to continue her in my care based on my original examination of her, my history I took of her and her compliance.

Tr. 851–52.[12]

Moreover, shortly after DF questioned the OxyContin 80 mg prescription (in early October 2007), Respondent was provided with a copy of a letter (dated 9–13–07) written by another physician (Dr. P.), which stated that Dr. P. had fired DK for breaking her pain contract, specifically citing DK's use of cocaine and narcotics. RX 30, at 20. Respondent noted in DK's record that the patient, who provided him with this letter, had observed that DK, who had recently stayed in the patient's residence, had ''not be[en] compliant with her medications,'' and that this was corroborated by the reporting patient's relative. *Id.* at 21.

On October 19, 2007, Respondent sent out a Fax Net[13] cancelling the narcotic prescriptions he had issued to DK earlier that day. *Id.* at 19. However, the following month, he resumed prescribing both OxyContin and oxycodone to DK. *Id.* at 46. Respondent also noted in DK's chart that his plan was ''to contact Dr. [P's] office, receive prior treatment information from [DK] and review this with prior providers, review this with [DK] before making a decision to continuing care for her. In the event, opioid medication care is not continued, she will be supported with detoxification medication and referral to appropriate treatment.''

Respondent testified that he corroborated with DK's previous physician that she had ''violated the pain contract.'' Tr. 844. However, he concluded that he ''was her physician and she obviously needed additional care.'' *Id.* According to Respondent, he told DK that ''in order to continue treatment she would have to get treatment at the Behavioral Health Center for this drug problem,'' and that he ''coordinated with Behavioral Health Center'' and ''required records back.'' *Id.* at 844–45. Respondent then maintained that they ''requested actually that I continue the care'' as DK ''continued to have pain and needed treatment for that and that was how we proceeded.'' *Id.* at 845.

Respondent then explained that he did not fire her at that point because:

> Abandoning her would have been unethical and immoral in my mind. She was—had multiple problems, including psychiatric. She had been apparently to two doctors previously. I felt that if I had fired her at that point, she would have gone looking for another doctor. She wouldn't have gotten the care she needed. And that as long as she was willing to cooperate with a restructured treatment plan and supervision, it was my responsibility to care for her.

Id. Respondent further maintained that ''[a]fter we sent her to CODAC Behavioral Health, we continued to care for her at a lower dose. Communicated with them. She came back to us several months later for several more visits.'' *Id.* at 848.

Respondent continued to prescribe OxyContin and oxycodone to D.K. Indeed, he issued prescriptions for these drugs (as well as others) on a monthly basis on multiple occasions following her commencement of treatment at CODAC Behavioral Health, up to and including in March 2008, after which he stopped prescribing OxyContin but continued prescribing oxycodone 30mg and added methadone. RX 30, at 46–47. This continued through DK's last visit, which occurred on August 27, 2008. *Id.* DK, however, had tested positive for cocaine on June 3, 2008. *Id.* at 3; Tr. 1013.[14]

[11] Respondent also noted that DK ''was previously treated with methadone, five to six years ago, and also received Percocet in the past. She has also a history of diazepam for muscle spasms.'' *See* RX 30, at 40. Respondent also noted that DK had undergone physical therapy and ''some psychiatric counseling.'' *Id.*

[12] At the first visit, Respondent prescribed DK 180 tablets of OxyContin 80 mg as well as 180 tablets of oxycodone 30 mg. RX 30, at 40. Respondent issued monthly prescriptions to DK for both drugs, increasing the quantity of OxyContin 80 mg to 210 tablets after three months; he also issued monthly prescriptions of oxycodone 30 mg, which were typically for 180 tablets. *Id.*

[13] A Fax Net is an Arizona State Board of Pharmacy form which is used by doctors and pharmacies to report such incidents as forged prescriptions, phony telephone prescriptions, doctor shopping, prescription pad thefts, and armed robberies. *See* RX 30, at 19.

[14] While Respondent acknowledged that DK was prescribed 45 dosage units of oxycodone 30 mg on June 30, 2008, Tr. 1013, he then testified that:

> [m]y progress notes only go to June 4th, so I don't know anything more than the record reflects that she was prescribed that. It may or may not have been me. My last progress note in this is June 4, 2008 and then there's one additional note, August 27, '08 which has really no record except it was a rewrite for a methadone script.

Tr. 1013. While on further questioning, Respondent again testified that he did not know whether he or another doctor wrote the script, he acknowledged that his office had continued to prescribe oxycodone to DK even after her positive test for cocaine. Tr. 1015.

Notwithstanding his testimony that on June 4, 2008, DK ''was given a three day supply of oxycodone, 40 to 60 milligrams a day, and then it was to be reduced,'' *id.* at 1014, Respondent later acknowledged that between June 4 and August 27, 2008, DK's oxycodone prescription was ''increased'' from 15–30 mg per day to thirty mg, twice a day. *Id.* at 1016. Respondent then maintained that RX 30, an exhibit he introduced into the record (and which was denominated as ''Copy of DK Medical

Continued

As set forth above, the Board found that even after Respondent had referred DK for treatment for substance abuse, he continued to prescribe opiates to her for her back pain. Moreover, the Board found that Respondent continued to prescribe opiates to DK after he learned that she had successfully completed inpatient opioid detoxification.[15]

Of note, DK's medical record contains the results of a single urine drug screen, which did not occur until June 3, 2008.[16] Yet even after this screen showed that DK tested positive for cocaine, Respondent continued to prescribe to her.

On cross-examination, Respondent testified that ''we didn't have all the perfect records.'' Tr. 1027. However, he then asserted that DK ''wouldn't tell us or couldn't tell what they were.'' *Id.* When asked if he accepted the AMB's judgment regarding his treatment of DK, Respondent testified that ''I accept that I didn't do a urine screen early on, which we would always do now.'' *Id.* at 1028. As for the AMB's findings that he failed to obtained DK's records, Respondent testified that ''I accept that I didn't get old records, which we would handle as we handled,'' *id.* whatever that means.

As for the Board's findings related to his continued prescribing to DK, even after he had referred her to substance abuse treatment and even after ''she had completed inpatient opioid detoxification treatment,'' (AMB Finding #7), Respondent testified that he did not accept the Board's finding. Tr. 1028. According to Respondent, ''they said I referred her to treatment and that was great that I followed her. She continued . . . to have pain and I did that treatment at much, much lower doses in conjunction with . . . her behavioral health center and at their request. So I think that was appropriate. But that's [sic] everybody has differences of opinions.'' *Id.*

The 2010 AMB Order

As set forth above, under the terms of the 2009 AMB order, Respondent was required ''to participate in the periodic review of his patients' charts.'' GX 18, at 14; GX 17, at 6. The Board's staff selected three charts at random and provided them to a medical consultant who reviewed them and ''found deviations from the standard of care in each case,'' as well as ''medical recordkeeping issues.'' GX 18, at 14. The 2010 AMB Order set forth extensive findings regarding three patients, JR, LP, and ML. *Id.* at 14–16.

Based on several complaints the Board received regarding his treatment and care of multiple patients, the AMB initiated additional cases. *See generally id.* at 2–17. In its 2010 Order, the AMB made extensive findings regarding Respondent's treatment of patients AL, KF, JF, DD, SS, AM, MF, ML, WO and CJ. *See id.* at 2–13, 17. Based on these findings, the AMB concluded that Respondent had engaged in unprofessional conduct, both by ''[f]ailing or refusing to maintain adequate records on a patient,'' and by engaging in ''[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.'' *Id.* at 17 (citing Ariz. Rev. Stat. §§ 32–1401(27)(e) and (q)).[17]

JR

The Board found that Respondent treated JR for reported neck and back pain from July 2007 until September 2009. GX 18, at 14. No previous medical records were obtained prior to Respondent prescribing oxycodone, Xanax and Subutex. *Id.* Despite normal CT scans of JR's head and neck on February 18, 2008, Respondent continued to prescribe oxycodone on numerous occasions until August 2009. *Id.* Respondent changed JR's medication on several occasions without documenting his reasoning and refilled JR's medication after he reported that it had been stolen. *Id.*

According to the Board, when treating a patient for chronic pain, the standard of care requires a physician to obtain prior records pertaining to the past treatment of the patient, and to obtain any objective measures for the cause of pain. *Id.* The Board found that Respondent deviated from the standard of care because he did not obtain JR's previous medical and/or treatment records prior to prescribing opioid medication for reported chronic pain, and that he failed to obtain objective measures for the cause of JR's pain. *Id.* It further found that Respondent's conduct could result in an overdose and/or perpetuation of drug seeking behavior and addiction. *Id.*

The Board also found that Respondent's records were inadequate because they failed to document a treatment plan and reasoning for high dose opioids in a patient with a history of substance abuse, lost/stolen medications and positive drug-screen findings. *Id.* at 15. Further, his records failed to adequately document the reasoning for, and the results of, his prescribing of Adderall.[18] *Id.*

LP

The Board found that LP's chart indicated that in August 2005, Respondent began treating LP for his reported history of chronic lower back

Records in Possession of [Respondent],'' was ''apparently not'' DK's complete patient file, but rather only ''the med log'' as ''the notes aren't there that would explain in detail what was going on.'' *Id.* at 1017.

[15] According to the affidavit of Dr. Bennett Davis, Respondent's medical record for DK included ''notes from CODAC behavioral health clinic from 12–04–07 and 03–18–08.'' RX 8, at 7. Strangely, the exhibit which Respondent submitted as DK's medical record does not contain a note from CODAC dated 3–18–08. *See generally* RX 30.

[16] A letter dated 10/09/08 from Respondent's practice to another physician regarding DK's request for medical records stated that ''[s]he also tested positive for cocaine on two occasions. She was referred to Codac Behavioral Health for additional help and to our knowledge she did not complete treatment.'' RX 30, at 1. While the log of DK's prescriptions contains an entry for July 28, 2008, indicating that a urine drug screen was done on this date, DK's patient record, as submitted into evidence, contains the test results of only the June 2008 drug screen.

[17] Under Ariz. Rev. Stat. § 32–1401(2), the term '''[a]dequate records' means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.''

[18] Regarding JR, as well as LP, CJ, WO and JF, Respondent's Expert testified that she believed that Respondent was ''practicing with skill and safety,'' (as she had written in her June 7, 2010 letter to the AMB) in that ''[t]he dosage he prescribed for the patients initially based on their symptoms, which of course are subjective, were reasonable. When he raised the doses subsequently, he did it in a careful manner, and he didn't increase them sufficiently to risk the patient's health. So I felt that he was skillful and he was taking into consideration the safety of the patient.'' Tr. 592–93. Yet in her letter, Dr. Schneider noted ''it is difficult at times to reconstruct his reasoning because his documentation, although typical of psychiatric patients, needs to be more detailed when dealing with chronic pain patients.'' RX 4, at 1. And subsequently, Dr. Schneider testified that she ''remember[ed] that I read some of [Respondent's] records where he didn't do a physical exam on the first visit and things like that.'' *Id.* at 597. Thus, even if the Board's findings were subject to relitigation in this proceeding, Dr. Schneider's testimony provides no reason to reject the Board's findings.

Dr. Schneider also took issue with several of the AMB findings, asserting that in the case of one patient (AM), ''the consultant alleged'' that Respondent ''did not get prior imaging studies'' when ''those records were in the chart''; that in the case of MF, ''the consultant alleged that [he] did not try alternative non-opioid treatment before initiating opioid treatment,'' as well as that he did not get imaging studies when ''a CT of the thorax was in the chart''; and that ''the consultant alleged'' that he did not physically examine patient SS at the initial visit, when the results were in the chart. RX 4, at 2.

Here again, Respondent could have raised these contentions with the Board. Moreover, even if the Board's findings were subject to relitigation, the Board made findings with respect to fourteen patients. Thus, even if I were to place no weight on the Board's findings with respect to these three patients, the Board's findings were essentially unchallenged with respect to most of the other patients.

pain, DJD, musculoskeletal pain, chronic depression, PTSD, Lupus and ADD. *Id.* On the first as well as subsequent visits, Respondent prescribed OxyContin and oxycodone without obtaining past medical records. *Id.* The Board noted that objective data in the records such as x-rays were documented as normal; however, Respondent continued to treat LP with opioids and/or methadone through October 2009 without a documented treatment plan. *Id.* Respondent increased LP's medications, as well as changed them at times without documented reasoning. *Id.*

According to the Board, the standard of care when treating a patient for chronic pain requires a physician to obtain objective measures as to the cause of pain. *Id.* The Board found that Respondent deviated from the standard of care in that he continued to treat LP's reported pain with high-dose opioid medications without obtaining objective measures as to the cause of the reported pain. *Id.* The Board further found that Respondent's conduct could result in an overdose or perpetuation of drug seeking behavior and addiction. *Id.* at 16.

The Board also noted that Respondent's records were inadequate because they fail to adequately document the initial visit, treatment plan and reasoning for high dose opioids and changes in medications, in violation of Ariz. Rev. Stat. § 32–1401(2).

ML

The Board made findings pertaining to ML, a twenty-three year old male, as part of both the random chart review it conducted pursuant to the 2009 Order, as well as the case it opened following the receipt of a complaint regarding Respondent's care and treatment of him.[19] *Id.* at 9, 16.

The Board found that in October 2006, Respondent diagnosed ML with spondylolisthesis based on his reported history and that he prescribed oxycodone, but that he did not perform a facet, sacroiliac joint, myofascial pain or neural flexes examination on ML, nor did he test him for weakness or numbness. *Id.* at 9. The Board also found that Respondent did not order flexion extension films to assess spinal instability from spondylolisthesis or an MRI scan to assess for neural compression. *Id.* Moreover, in the course of its chart review, the Board found that there was an x-ray in the chart dated February 18, 2008, which stated: ''NO evidence of spondylolisthesis.'' *Id.* at 16.

The Board found that in November 2007, Respondent documented that ML had, on his own, increased the oxycodone medication. *Id.* at 9. However, there was no documentation that Respondent cautioned ML to adhere to his dosing instructions. *Id.*

The Board also found that from January through December 2007, Respondent prescribed multiple early refills of oxycodone, that he added hydrocodone to the regime in January but discontinued it in March without indication, and that from February through December 2008 Respondent prescribed multiple early refills of oxycodone.[20] *Id.* It also found that in June 2008 Respondent was notified that ML was undergoing methadone treatment at a facility; however, Respondent he did not obtain ML's medical records from that facility. *Id.*

Next, the Board found that Respondent discharged ML from opioid therapy in January 2009, but restarted opioids in March 2009, without documenting an explanation. *Id.* Moreover, the Board found that even after he was placed on probation pursuant to the 2009 Order, ''Respondent continued to prescribe high-dose opioids to ML for pain secondary to spondylolisthesis'' until September 2009. *Id.* at 16. The Board noted that during the course of Respondent's treatment of ML there was no further documentation that he performed any examinations prior to prescribing the medications, or that he obtained ML's past medical records or diagnostic studies. *Id.* at 9–10.

According to the Board, prior to initiating high dose opiate therapy, the standard of care requires a physician to perform an adequate exam for pain generators, obtain the patient's past medical records and diagnostic studies, offer the patient adjunct treatments that include non-opioid medications and physical therapy, address aberrant drug seeking behaviors, and refrain from prescribing more than one month of Schedule II prescriptions at a time. *Id.* The Board found that Respondent deviated from the standard of care because he did not perform an adequate exam prior to initiating high dose opiate therapy, did not obtain ML's past medical records and diagnostic studies, did not offer adjunct treatments, did not address ML's aberrant drug-seeking behaviors, and did not refrain from prescribing more than one month of schedule II prescriptions at a time. *Id.*

As it noted with the previously discussed patients, the Board also found that when treating a patient for chronic pain, the standard of care requires a physician to obtain objective measures as to the cause of pain. *Id.* at 16. The Board thus found that Respondent violated the standard of care by continuing to treat ML's reported pain with high-dose opioids without obtaining objective measures for the cause of his pain, and that his conduct could result in the perpetuation of ML's drug-seeking behavior/addiction or an overdose. *Id.* In addition, the Board found that there was potential for diversion or abuse of the oxycodone. *Id.* at 10.

Finally, the Board found that ''[a] physician is required to maintain adequate legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate [the] advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.'' *Id.* at 11 (citing Ariz. Rev. Stat. § 32–1401(2)). The Board thus found that ''Respondent's records were inadequate[,] because there was no documentation that [he] performed any [neurologic] and musculoskeletal examinations prior to prescribing opioid therapy, no documentation that he cautioned ML to stay within the prescribing instructions, no documented rationale for re-starting opiates again later[,] and that [he] did not obtain ML's medical records from the treatment facility or from his previous treating physicians.'' *Id.*

During the hearing, Respondent's expert did not dispute the Board's findings with respect to Respondent's multiple early refills for ML. Tr. 675. She also did not dispute that notwithstanding that ML had tested positive for both marijuana and cocaine, as well as benzodiazepines which Respondent had not prescribed on previous visits, Respondent continued to prescribe oxycodone to him. *Id.* at 675–76. Nor did she dispute that ML

[19] This individual is not the same person as the confidential source who made undercover visits to Respondent on May 2 and June 6, 2008, and was also referred to by the initials ML.

Respondent also elicited testimony from an individual with the same initials, who testified that he was treated by Respondent for spondylolisthesis. Tr. 464–94. The testimony of this individual suggests he may well have been the same ML as discussed in the AMB's 2010 Order. *Compare* GX 18, at 9 (discussing ML's treatment at methadone facility) *with* Tr. 474, 484–8 (ML testifying about his treatment by methadone program). The record does not, however, definitively establish if the ML who testified and the ML discussed in the AMB's Order are one and the same.

[20] Here again, Respondent's Expert did not take issue this finding. Tr. 675.

had tested negative for oxycodone even though Respondent had prescribed the drug to him at the preceding visit. *Id.* at 677. While Dr. Schneider testified that there might be a valid reason why a short acting opioid might not turn up in a urine drug screen (depending upon when it was taken), she testified that the physician ''need[s] to find out when the patient took their last dose so that you can find out if there's some legitimate reasons for why they[sic] tested negative when one would have expected it to be positive.'' *Id.* at 679. And notwithstanding that the ALJ allowed Respondent to relitigate the Board's findings, Respondent offered no evidence as to whether ML had a legitimate reason for testing negative for oxycodone.[21]

CJ

Following its receipt of a complaint from a pharmacy alleging inappropriate prescribing by Respondent, the Board investigated his treatment of CJ. GX 18, at 17. The Board found that Respondent ''prescribed large amounts of opioids to . . . CJ with an inadequate treatment plan,'' and that he did so even though ''CJ had a history of testing positive for [h]eroine [sic], [o]xycodone, [m]orphine and [c]ocaine.'' *Id.* The Board also found that ''on two occasions, CJ tested positive for narcotics that were not prescribed by Respondent.'' *Id.*

According to the Board, ''[t]he standard of care is to develop an adequate treatment plan prior to prescribing opioids and to treat the patient's substance abuse problem before treating pain.'' *Id.* The Board found that Respondent violated this standard when he ''prescribed opioids to CJ without an adequate treatment plan,'' and that he ''exposed the patient to possible drug overdose and drug diversion.'' *Id.*

AL

The Board found that on November 6, 2006, AL, who was then an eighteen year old female, presented to Respondent complaining of moodiness and irritability. *Id.* at 2. Respondent diagnosed AL as having Attention Deficit Hyperactivity Disorder and prescribed Adderall (a schedule II stimulant) to her, but did not document the prescription in AL's record. *Id.* The Board found that there was no documentation that Respondent performed an adequate psychiatric evaluation, which included ordering laboratory studies; that he had obtained her past medical records, her history of alcohol or substance abuse, and her psychiatric history; or that he performed a functional assessment to support his diagnosis and prescription. *Id.* The Board also found that there was no initial treatment plan documented in the record. *Id.*

The Board further found that ''[f]rom November 2006 through February 2009, Respondent provided AL with frequent, early and escalated doses of Adderall without documenting any rationale for doing so.'' *Id.* Moreover, the Board found that ''[o]n several occasions[,] AL attempted to refill her Adderall prescription early. There was, however, no documentation that Respondent investigated or addressed AL's rationale for doing so. *Id.*

Next, the Board further found that during the course of AL's treatment, Respondent added Prozac, Cymbalta, Lorazepam, and Zoloft[22] to her medication regime but did not document his rationale for the medications or whether he discussed the risks and benefits of taking them. *Id.* There was also no documentation that he ordered any laboratory studies to support his continued prescribing of Adderall, or urine drug screens to determine whether AL was taking the medications as prescribed and/or any illicit substances. *Id.* Further, several of Respondent's progress notes were illegible. *Id.*

The Board found that the standard of care requires a psychiatrist to perform adequate psychiatric evaluations prior to commencing treatment, and that when prescribing Adderall, a physician is required to perform tests to confirm the diagnosis and the necessity of the medication, and to monitor the patient's use of the medication. *Id.* at 3. The Board thus found that Respondent deviated from the standard of care in that he did not perform an adequate psychiatric evaluation of AL, he did not perform tests to confirm his diagnosis and the necessity of medication, and he did not monitor AL's use of the medication. *Id.*

The Board further found that there was no collateral information in AL's record to support prescribing Adderall, which created a potential for misdiagnosis, addiction, abuse, misuse, overdose and diversion. *Id.* The Board also found that because no urine drug tests were performed, it was unknown whether AL was taking the medication as prescribed and/or whether she was utilizing illicit substances. *Id.*

Finally, the Board found that Respondent's records did not comply with Ariz. Rev. Stat. § 32–1401(2), because there was no documentation of the initial Adderall prescription, no documented initial treatment plan, the psychiatric evaluation was inadequate, there was no documented rationale for his prescribing of several medications, and several of his progress notes were illegible, including his use of non-standard abbreviations.[23] *Id.*

KF

The Board found that on March 25, 2008, Respondent began treating KF, a twenty-one year old female patient, who complained that she had ''difficulty finishing tasks and focusing.'' *Id.* at 4. Respondent prescribed Adderall to KF, yet ''[t]here was no documentation that [he] obtained her past medical records or ordered any laboratory tests that would qualify KF for a diagnosis to support the use of Adderall.'' *Id.* Respondent prescribed frequent early refills at several subsequent office visits without documenting any rationale for the refills. *Id.* Moreover, on November 4, 2008, Respondent increased KF's dose of Adderall from 20 mg to 30 mg, without any rationale for the prescription. *Id.* There was no documentation that Respondent ordered any laboratory studies to support his continued prescribing of the drug, or any urine drug screens to determine whether KF was taking the medications as prescribed and/or any illicit substances; also, ''several of Respondent's progress notes were illegible.'' *Id.*

The Board found that the standard of care requires a psychiatrist to perform adequate psychiatric evaluations, and that Respondent deviated from the standard of care because he did not perform an adequate psychiatric evaluation. *Id.* The Board also found that the standard of care requires a physician who prescribes Adderall ''to obtain prior medical records, perform tests to confirm the diagnosis and the necessity of the medication[,] and to monitor the patient's use of the medication.'' *Id.* The Board thus found that ''Respondent deviated from the standard of care because he did not obtain prior medical records, perform tests to confirm the diagnosis and the necessity of the medication[,] and he

[21] Nor did she dispute the Board findings that Respondent had continued to prescribe opioids to individuals with anomalous urine drug screens, such as where patients tested positive for drugs he had not prescribed or illicit street drugs, or had tested negative for drugs he had prescribed. Tr. 678–80.

[22] Of these drugs, only Lorazepam is controlled. *See* 21 CFR 1308.14(c).

[23] When asked about the Board's finding that ''Respondent provided AL with frequent early and escalated doses of Adderall,'' Respondent's Expert did not take issue with this finding. Tr. 668–69.

did not monitor KF's use of the medication.'' *Id.*

The Board also found that ''[t]here was no collateral information to support prescribing Adderall, creating a potential for misdiagnosis, addiction, abuse, misuse, overdose and diversion. Since no urine drug tests were performed it is unknown whether KF was taking the medication as prescribed and/or whether she was utilizing illicit substances.'' *Id.* at 4–5.

Finally, the Board found that Respondent's records were inadequate because he did not obtain KF's past medical records, did not document a physical examination prior to prescribing medications, did not document any rationale for the prescriptions, dosage escalations, additions of medication, that several of Respondent's progress notes were illegible, and that he used non-standard abbreviations.[24] *Id.* at 5 (citing Ariz. Rev. Stat. § 32–1401(2)).

JF

The Board found that Respondent began treating patient JF, a nineteen-year old female patient in August 2007 for chronic pain, Attention Deficit Disorder and Obsessive Compulsive Disorder. *Id.* JF reported current prescriptions of OxyContin 40 mg and oxycodone 30 mg. *Id.* There was neither a documented physical examination nor laboratory studies, and Respondent did not obtain past medical records. *Id.* Respondent, however, prescribed 90 tablets of OxyContin 40 mg, 45 tablets of oxycodone 30 mg, and Requip to her. *Id.*

The Board found that Respondent added Adderall to JF's medication regime in October 2007, without documenting any rationale for the medication. *Id.* It also noted that during the course of JF's treatment, she reported on multiple occasions damaged or stolen prescriptions, running out of medication, and that the pharmacy had refused to fill a prescription because of different handwriting. *Id.* However, Respondent continued to prescribe to her and escalated the doses of oxycodone and Adderall. *Id.* The Board further found that there was no documentation that Respondent ordered laboratory studies to support his continued prescribing of OxyContin, oxycodone, and Adderall, or that he did any urine drug screens to determine whether JF was taking the medications as prescribed and/or illicit substances. *Id.* at 5–6. In addition, there was no documentation that Respondent referred JF to a specialist for consultation. *Id.* at 6.

The Board found that that the standard of care requires a psychiatrist to perform adequate psychiatric evaluations, and that Respondent deviated from the standard of care because he did not perform an adequate psychiatric evaluation for JF. *Id.* In addition, the Board found that when a physician prescribes Adderall, the standard of care requires that he perform tests to confirm the diagnosis and the necessity of the medication and to monitor the patient's use of the medication, and that Respondent deviated from this standard because he prescribed the drug without performing tests to confirm the diagnosis and the necessity of the medication and did not monitor JF's use of the medication. *Id.*

Next, the Board found that when prescribing opioids for the treatment of chronic pain, the standard of care requires a physician to review previous diagnostic studies and interventions, assess the chronic pain complaint prior to initiating an opioid trial, appropriately monitor the patient's use of the medication, and obtain appropriate therapeutic and laboratory test results that support the diagnosis. *Id.* The Board found that Respondent deviated from the standard of care because he did not review past medical records and he did not order appropriate tests or consultations for JF. *Id.*

The Board further found that there was no collateral information to support prescribing Adderall, which created a potential for misdiagnosis, addiction, abuse, misuse, overdose and diversion, and that no urine drug tests were performed to determine whether JF was taking the medication as prescribed. *Id.* The Board also found that Respondent's medical records for JF were inadequate because he did not obtain JF's past medical records, did not document a physical examination prior to prescribing medications, did not document any rationale for prescriptions, dosage escalations, and additions of medication. *Id.* at 7. Further, it found that Respondent used non-standard abbreviations in his records. *Id.* (citing Ariz. Rev. Stat. § 32–1401(2)).

DD, SS, AM & MF

The Board found that in 2008, Respondent treated patients DD, SS, AM and MF for chronic pain. *Id.* He prescribed medications that included OxyContin and oxycodone based on the patients' reported history and complaints of chronic pain. *Id.* Yet the Board found that there was no documentation that Respondent obtained past medical records to confirm the patients' diagnoses. *Id.* Moreover, the Board found that during the course of his treatment, Respondent provided early refills and escalated the patients' doses of OxyContin and oxycodone, without documenting any rationale to support his diagnosis or prescribing. *Id.*

The Board further found that Respondent ''did not perform adequate physical examinations, obtain past medical records, or order diagnostic and laboratory studies.'' *Id.* Also, there was no documentation that Respondent referred the patients to a specialist to confirm his continued prescribing of opioids, or that he performed any urine drug screens to determine whether the patients were taking the medications as prescribed and/or illicit substances. *Id.*

The Board found that when prescribing opioids for the treatment of chronic pain, the standard of care ''requires a physician to review past diagnostic studies and interventions, assess and confirm the chronic pain complaint prior to initiating an opioid trial, appropriately monitor the patient's use of the medication, and obtain appropriate therapeutic and laboratory results that support the diagnosis. *Id.* at 8.

The Board found that Respondent deviated from the standard of care because he did not review DD's, SS's, AM's and MF's past diagnostic studies and interventions, assess and confirm their chronic pain complaints prior to initiating an opioid trial, appropriately monitor their use of the medication, and obtain appropriate therapeutic and laboratory test results that supported his diagnoses of chronic pain. *Id.* The Board further found that there was no collateral information to support prescribing opioids to DD, SS, AM and MF, thus creating the potential for misdiagnosis, addiction, abuse, misuse, overdose and diversion, and that because no urine drug tests were performed, it was unknown whether they were taking the medication as prescribed and/or whether they were utilizing illicit substances. *Id.*

Finally, the Board found that Respondent's records for patients, DD, SS, AM, and MF were inadequate because he did not obtain past medical records, did not document adequate physical examinations or laboratory and diagnostic studies prior to prescribing medications, did not obtain any diagnostic studies to support his continued prescribing of medications,

[24] Here again, Respondent's Expert did not dispute the Board's finding that Respondent provided AL with ''frequent early refills of Adderall.'' Tr. 669. She also did not ''take issue with the fact that this dose was increased.'' *Id.* at 670.

and did not document any rationale for prescriptions and dosage escalations.[25] *Id.* at 8–9 (citing Ariz. Rev. Stat. § 32–1401(2)).

WO

The Board investigated a complaint regarding Respondent's care and treatment of patient WO, a fifty-two year old male, for chronic pain syndrome. *Id.* at 11. Respondent assumed WO's care in January 2008, at which time ''WO was on [o]xycodone, [m]orphine [s]ulfate immediate release (MSIR) and Soma, which had been prescribed by his previous physician.'' *Id.*

The Board found that Respondent reviewed previous imaging studies, including a computed tomography scan of WO's pelvis and abdomen that showed healed lower right lateral rib fractures, but no other abnormalities, and a cervical spine film that showed mild hypertrophic degenerative changes in the mid-cervical spine, but no other abnormalities. *Id.* The Board found that from WO's initial visit until July 2009, Respondent continued to see WO and refill the prescriptions. *Id.* The Board found, however, that there was no documentation that he performed a neurological or musculoskeletal exam or ordered any imaging studies of WO's lumbar spine or laboratory studies, prior to continuing the treatment of WO's previous physician. *Id.*

The Board also found that from March 2008 through December 2008, Respondent increased WO's dosage of oxycodone 30 mg to six tablets per day. *Id.* at 12. Moreover, on May 30, 2008, Respondent added Morphine Sulfate (MS) Contin 30 mg for poor sleep, but subsequently increased the dose without documenting a rationale for the increase. *Id.* Yet there was no documentation that Respondent performed any physical examinations or obtained any radiologic studies to support his increased opioid prescribing. *Id.*

Next, the Board found that in February 2009, Respondent discontinued prescribing MS Contin to WO and instead prescribed six tablets per day of morphine sulfate 30 mg to him. *Id.* The Board found that Respondent simultaneously increased WO's oxycodone dose to eight tablets per day, yet did not document a rationale for the increase. *Id.*

In March 2009, Respondent performed a urine drug screen on WO; the screen was negative for oxycodone, but positive for methadone and codeine, which were not among his prescribed medications, as well as heroin. *Id.* At WO's next visit, Respondent documented that he was aware of the positive drug screens. *Id.* The Board found however, that Respondent did not adequately investigate or address the abnormal results by either referring him to an addiction medicine specialist or discontinuing the opioid prescriptions. *Id.*

The Board found that the standard of care requires a physician to perform an adequate work up of a patient prior to continuing treatment of the patient's prior treating physician, to perform an adequate physical examination, and to obtain radiologic data to support the amount of opioid medications prescribed to the patient. *Id.* The Board found that Respondent deviated from the standard of care because he did not perform an adequate work-up and that the physical examination and radiologic data did not support the amount of opioid medications he prescribed to WO. *Id.* at 12–13.

The Board also found that the standard of care requires a physician to adequately investigate or address a patient's abnormal urine drug screen. *Id.* at 13. The Board found that Respondent deviated from the standard because he did not adequately investigate or address WO's abnormal urine drug screen. *Id.*

The Board further found that Respondent allowed WO to continue a pattern of illicit substance use and opioid misuse. *Id.* The Board found that that Respondent's prescribing of 240 tablets of oxycodone per month also created a potential for misuse and diversion.[26] *Id.* Finally, the Board found that Respondent's records were inadequate because there was no documentation that he performed a neurological or musculoskeletal examination, ordered any imaging or lab studies prior to continuing the treatment, and there was no documented rational for his excessive prescribing of opioids. *Id.* (citing Ariz. Rev. Stat. § 32–1401(2)).

Summary of the 2010 Order

Based on its findings with respect to all of the patients, the Board found that Respondent committed unprofessional conduct by ''failing or refusing to maintain adequate records on a patient,'' Ariz. Rev. Stat. § 32–1401(27)(e), as well as by engaging in ''[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public,'' Ariz. Rev. Stat. § 32–1401(27)(q). GX 18, at 17. The Board issued Respondent a Decree of Censure and prohibited him ''from prescribing, administering or dispensing any opioids for a period of one year.'' *Id.* at 18. It also placed him on probation for two years; among the terms of the probation, Respondent was required ''to complete the PACE prescribing course within 6 months of the effective date of this Order'' and enter into a contract providing for quarterly chart reviews by a monitor. *Id.*

Regarding the 2010 AMB Order, Respondent testified that the Board had reviewed 45 of his patient records and had not criticized his recordkeeping other than with respect to the thirteen that were the subject of the Order. Tr. 856–58. He asserted that the reason his recordkeeping was inadequate was because his ''early training and practice was primarily in psychiatry'' where ''[t]he confidentiality of the patient is paramount,'' such that his ''[n]otes were often brief'' and hit just ''the main points'' of the patient's ''main complaint, perhaps a mental status examination, the diagnosis and the plan.'' *Id.* at 859–60. He then testified that ''the main purpose of the record was to refresh your own memory and wasn't necessarily always focused on outside review,'' *id.* at 860, but that he was now ''making every effort to make the record transparent to outside individuals, which was really not the standard of care or the practice for psychiatry.'' *Id.* at 861.

Respondent further testified that during the period in which the AMB was investigating his prescribing to D.K., he sought out assistance from other pain management physicians, studied for and took the board in Pain Medicine, read multiple textbooks and took online courses. *Id.* at 864. He also testified that he had complied with the 2010 Order's practice restriction, which prohibited him from prescribing opioids, and that the restriction had been lifted. *Id.* at 870.

As far as other measures he has undertaken since 2007, Respondent stated that his practice was now able to use the Arizona Controlled Substance Prescription Monitoring Program, that the office was now certified to do in-office urine testing and that it was doing random urine screening, that the office was using the fax alert system, and that he was now placing ''[a] very high priority'' on calls from pharmacies. *Id.*

[25] When asked about the Board's finding with respect to these four patients that ''[d]uring the course of treatment Respondent provided early refills and escalated the patient doses,'' Respondent's Expert testified that she didn't know whether or not it was appropriate for Respondent to increase the patients' doses ''because he didn't document it.'' Tr. 670–71.

[26] The Board also found that ''[t]he long-term use of Soma has the potential for habituation and misuse.'' GX 18, at 13. However, at the time, Soma (carisoprodol) was not a controlled substance under federal law.

at 870–72. Respondent also stated that he had imposed an ''internal kind of ceiling on opiate dosing,'' and that ''[w]e're not a prescribing mill.'' *Id.* 874, 877.

Regarding the second AMB Order, Respondent testified that ''there was a Board statement that no actual harm was found in any patient'' and ''no patients . . . were found to have been diverting substances.'' *Id.* at 883. He then asserted that ''[t]here was no potential addiction, which was perpetuated by my behavior, which is one of the claims.'' *Id.* When asked whether he accepted the AMB's criticism of his recordkeeping and care of his patients, Respondent testified: ''Yes. I realize this is a difficult area and that I need to keep working to improve and I have and I will.'' *Id.* at 884. Respondent then testified that ''I accept the general criticism that there needs to be improvement of my care as I can do so'' but that he did not agree with some of the specifics of the Order, as his Expert had testified. *Id.*

The Undercover Visits

The Government also introduced evidence that it sent two confidential sources (CS) into Respondent's office to obtain controlled substances; each source performed two visits and obtained controlled substances at each visit. With respect to these visits, the Government introduced the recordings (and transcripts) of each visit, and the medical record for each CS. In addition, the Government elicited testimony from a Special Agent (S/A) who was involved in conducting the visits and debriefing the CSs after the visits.

The Government did not, however, elicit testimony from an expert witness regarding whether Respondent had acted within the usual course of professional practice and with a legitimate medical purpose when he prescribed to the two CSs. Instead, it argues that the evidence shows that ''on four occasions,'' Respondent prescribed controlled substances to the CSs ''without ever conducting a physical examination,'' and that the prescriptions violated an Arizona Statute, which provides that it is '' '[u]nprofessional conduct' '' to '' '[p]rescrib[e], dispens[e], or furnish[] a prescription medication . . . to a person unless the licensee first conducts a *physical examination* of that person or has previously established a doctor-patient relationship,' '' and therefore, the prescriptions violated 21 CFR 1306.04(a). Gov. Exceptions at 3 (quoting Ariz. Rev. Stat. §§ 32–1401(27)(ss)).

With respect to RL, the evidence showed that she visited Respondent on April 9 and May 7, 2008, obtaining a prescription for 120 oxycodone 5 mg at the first visit and a prescription for 60 OxyContin 20 mg. at the second visit. *See* GXs 3 and 5. In addition, the S/A testified that during the debriefing of RL following her visit, RL said that ''she told [Respondent] where she had pain'' and that Respondent ''asked a series of questions regarding exercise, sleep, family history, basically general medical questions as to how her life is, what her occupation is, what she does, is she stressed out, does she have anxiety, things of that nature.'' Tr. 358. The S/A further testified that RL did not provide any medical records to Respondent and that RL ''said there was no physical examination.'' *Id.* at 359.

According to the transcript of the visit, RL complained of having hip pain which was caused by a fall. GX 11, at 2. Respondent asked RL a series of questions, including when she had fallen; whether her hips had been ok prior to the fall; whether she had had an x-ray or MRI, and whether the x-ray showed arthritis; whether the pain bothered her when she did various body movements and whether it went down her leg; how often she had the pain; whether it was a sharp or dull pain; whether she had any numbness; whether it impaired her ability to walk; whether it affected her ability to sleep, her appetite, her energy, and her mood; whether she had anxiety attacks; whether she drank alcohol; whether she had taken any medication for the pain and whether it had helped; whether her health was otherwise good; and whether her family had certain medical conditions. *Id.* at 3–8; 13–15; 18–22. Respondent also discussed various forms RL needed to complete, including one to describe her pain, his controlled substance contract, and a form regarding which pharmacy she was using. *Id.* at 25. Respondent then told RL that oxycodone and Percocet were ''not refillable'' and that the long-term effect of taking oxycodone could include constipation and affect her level of hormones. *Id.* at 29.

Although the transcript corroborates some of RL's hearsay statements (as related by the S/A), significantly, the transcript shows that early on in the visit, the following colloquy occurred:

> Respondent: Do you have any tenderness if, if you push on it like this?
>
> RL: Yeah.
>
> Respondent: Where does it hurt? Just when you push on it here?
>
> RL: Directly on it, yes.

Id. at 6.

While the above colloquy does not foreclose the possibility that Respondent may actually have palpated only his own hip and not RL's, the Government had the burden of proof on the issue and produced no other evidence other than the conclusory testimony of the S/A regarding RL's statement that Respondent did not perform a physical exam on her.[27]

With respect to the second CS (ML), the evidence showed that she saw Respondent on May 2, 2008 and June 6, 2008. GX 6, at 1; GX 8, at 1. At the first visit, Respondent prescribed 30 oxycodone 5 mg to ML, GX 6, at 1; at the second visit, Respondent prescribed both 30 oxycodone 5 mg and 30 morphine sulfate ER 15 mg. GX 8, at 1.

According to the S/A, during the debriefing following her first visit, ML stated ''that an evaluation was done with questions based on anxiety, sleep, her family history, [and] what her pain was. She said she had a pain in her shoulder due to her occupation.'' Tr. 373. ML also told Respondent that she had undergone gastric bypass surgery and ''how much weight she had lost.'' *Id.* The S/A further testified that ML did not provide Respondent with any medical records on this visit, and when asked what type of physical examination Respondent had performed on her during the visit, ML answered: ''[n]one.'' *Id.*

The transcript for the visit shows that after discussing her dental pain, ML complained of pain, stated that the pain was ''right here'' and that it was ''really hurting . . . a lot!'' GX 15, at 4. Respondent then asked if the pain was in the bone or ''the joint here?'' *Id.* ML stated that ''it's like a muscle type tissue or something.'' *Id.* Respondent then asked ML to ''point right there,'' ML said, ''[i]t, it hurts.'' *Id.* at 4–5. Respondent suggested that ML should ''maybe . . . get that injected'' and asked ''[w]hen did that start?'' *Id.* at 5. ML stated that she didn't remember when, or what she was doing when she started feeling the pain, and that she had to alter the position of her bra strap. *Id.*

After discussing that Respondent was also a psychiatrist, Respondent suggested that ML see his colleague, Dr. Skinner, who ''might be able to adjust that,'' and asked if the pain went down

[27] While the transcript for RL's second visit contains no indication that Respondent physically examined her, and the S/A testified that RL stated that she was not physically examined on that occasion, *see* Tr. 367, the Arizona statute does not require that a physician physically examine his patient on each occasion that he prescribes a controlled substance to her. *See* Ariz. Rev. Stat. §§ 32–1401(27)(ss)). Nor did the Government offer any evidence that under the standard of care, a physician is required to perform a physical exam on each occasion that he prescribes.

her arm. *Id.* at 5–6. ML replied in the affirmative and said it was ''hard for'' her because ''what I do is on the phone.'' *Id.* at 6. Respondent then suggested that ML use a headset so she could keep her ''head up straight,'' and asked, ''how often does that hurt you?'' *Id.* ML said the pain ''comes and goes,'' but that ''it's been about a month now that . . . it pulls.'' *Id.* Respondent then said he would see if Dr. Skinner would be available to help ML and asked ''what else is going on?'' *Id.* ML then complained that ''I get emotional'' and ''just stress out because I think people are looking at me''; ML and Respondent then discussed ML's efforts to lose weight and her having undergone a gastric bypass procedure. *Id.* at 7–9.

Next, Respondent asked ML if she was ''sleeping okay''; ML replied that she had ''a sleeping disorder'' for which she took ''some sleeping pills.'' *Id.* at 9. Thereafter, Respondent asked ML ''about [her] energy'' (with ML stating that she fatigued easily), if she was ''irritable or grouchy'' (with ML answering in the affirmative), and whether ML had anxiety or panic attacks, (with ML saying just when she hurt). *Id.* at 10. Respondent again asked ML, ''what hurts? It's, it's this area in your shoulder?'' and ML replied ''it's the shoulder, my back.'' *Id.*

Respondent then asked ML if she had depression (with ML saying she did not think so), whether she drank alcohol (ML answering ''no''), what ML took to sleep (with ML saying she had ''no idea''), whether she took any other medications (with ML apparently answering that she took a drug for blood pressure), and whether she had ''any other health problems'' (with ML answering ''no.''). *Id.* at 11–12. Following this, Respondent asked ML a series of questions about her family, including whether her parents were still alive, whether she had siblings, whether she was married and had children, as well as where she was living, and the circumstances surrounding the death of her mother. *Id.* at 12–17. Respondent then asked ML if she had ever taken medication for anxiety or depression; ML replied that she had taken Lexapro for a while and that it had helped but that she didn't have insurance and the drug was expensive. *Id.* at 17–18. ML added that the only drug she was presently taking were her ''pain pills'' and that they made her ''feel better.'' *Id.* at 18. When Respondent asked ML what she had taken in the past, the latter said that she had tried hydrocodone but was allergic to it, and that the only drug she thought she could take was oxycodone. *Id.* Respondent then asked how much oxycodone she could take; ML said she could take one a day and that the drug ''calm[ed her] down a lot,'' but that she did not know how many milligrams the pills were. *Id.* at 18–19. ML then said she was just really nervous and explained that she worked as a phone sex operator and that she had previously worked as a financial counselor at a hospital. *Id.* at 20–22.

Respondent asked ML who had previously given her pain medication; ML identified the name of a doctor and his practice. *Id.* at 22. Respondent then said he would see if Dr. Skinner was available and suggested that she might be able to ''fix'' ML's injured area and added that he would get ML some prescriptions. *Id.* at 24. Respondent then found Dr. Skinner and brought her to see ML. *Id.* at 26.

Respondent explained to Dr. Skinner that ML ''ha[d] a crook on her neck,'' which was ''like a . . . [a] little rock in there.'' *Id.* Notably, before Respondent completed this sentence, ML stated: ''That right there!'' *Id.* ML then complained that she could not move her arm very well and again said that she had to alter where she wore her bra strap. *Id.*

Dr. Skinner then observed that ML's shoulders were straight but that her ''neck [wa]s out,'' and after an unintelligible comment by Respondent, replied ''I know.'' Dr. Skinner then said that she would ''rotate it to the right . . . and then to the left.'' *Id.*at 27. ML asked if that was ''from a muscle spasm?'' *Id.* Dr. Skinner asked ML if she was ''on the phone,'' and after ML said that it was her ''job,'' Skinner stated: ''Okay, listen to me. Don't do that!'' *Id.* Respondent and Dr. Skinner then discussed with ML that she needed to get a headset or some other device so that ML could keep her head upright while she was on the phone. *Id.* at 27–28. ML then asked Dr. Skinner if she could ''feel that?'' *Id.* Dr. Skinner said ''[y]eah,'' and Respondent asked if there was something such as acupuncture'' that could be useful. *Id.* at 28–29.

Dr. Skinner then told ML not to ''resist [her] pain'' and explained that ''it's stuck because you keep your head in the wrong position'' and that ML was ''not going to be able to fix it, if [she] ke[pt] using [her] head, putting [her] head . . . that way.'' *Id.* at 29. ML said ''[a]h,'' and Dr. Skinner stated: ''Don't resist it please.'' *Id.* ML said ''[o]kay,'' and Dr. Skinner replied: ''Just accept it, until I say move. You might need to come back . . . I think it's going to take some time.'' *Id.* ML said ''now it's starting to feel a little better''; Skinner replied: ''Yeah, it does,'' and added ''but if you resist it[,] it's going to feel worse.'' *Id.* at 30.

ML then asked if ''it's more[ ] like a mental thing?'' *Id.* Dr. Skinner replied ''[e]xactly,'' and Respondent interjected: ''[w]ell, your muscles are attached to your brain[,] [y]ou know?'' *Id.* ML said ''[o]h,'' and Respondent added: ''So your . . . brain has to let it . . . .'' *Id.*

Dr. Skinner then stated: ''We got to release all that, so we can—and your neck is out of alignment. And I don't know if anything—yeah, push your head against my hand and relax.'' *Id.* After ML said ''Ah,'' Skinner said ''[o]kay,'' and added that ''we're going to have to work on it with acupuncture.'' *Id.* ML said ''okay,'' and Respondent told ML that if she made an appointment with Dr. Skinner, she would ''have it adjusted.'' *Id.* at 30–31. Respondent then asked Skinner if acupuncture would be of any use, and Skinner said that ''it helps it release it so.'' *Id.* at 31. After Respondent, Skinner, and ML discussed her weight loss, Skinner left. *Id.* at 31–32.

Respondent then told ML that he had various paperwork which had to be completed when he prescribed controlled substances, including his pain contract, a form that was sent to the patient's pharmacy, and a form on which ML was to show the location of her pain and describe it. *Id.* at 32–33. He also told ML that she was expected to participate in the meetings of a monthly support group for his pain management patients. *Id.* at 34–37.

Respondent then discussed with ML that all he was going to prescribe to her was oxycodone and asked if she had ever taken Percocet, a drug which combines oxycodone with Tylenol (acetaminophen). *Id.* at 38. ML said that she had taken Tylenol but it ''ha[d] done nothing'' for her, and after Respondent said that Percocet was a combination of the drugs, added that he would be giving ML oxycodone. *Id.* Respondent then explained that oxycodone had to be written every month. *Id.* at 39. After some small talk, the visit ended. *Id.* at 39–41.

Here again, the evidence shows that Respondent did more than simply observe ML during the course of her first visit. Rather, the evidence shows that ML was palpated during the visit.

In its Exceptions, the Government argues that ''Respondent's own expert (Dr. Schneider) testified that Respondent failed to conduct a physical examination of either [RL or ML] prior to issuing them prescriptions for controlled substances.'' Exceptions at 3. As support for the contention, the Government cites various portions of Dr. Schneider's testimony during cross-examination regarding both her review of RL's and ML's patient files and the

transcripts of the visits, as well as a May 27, 2011 letter she had written regarding Respondent's treatment of RL and ML. *Id.* In the letter, Dr. Schneider noted that she had reviewed the charts of both RL and ML, as well as the transcripts of their visits.[28] RX 23, at 1.

On cross-examination, the Government questioned Dr. Schneider about various findings that Respondent had documented in RL's record, including that her pulse was 70, that her respiration was 16, meaning that she was ''breathing at 16 times per minute,'' her hip flexion was 1 over 4 for her right hip and 3 over 4 for her left hip, and that her range of motion was fair. Tr. 635–36.

The Government then asked Dr. Schneider to point to where in the transcript Respondent had measured RL's pulse. *Id.* at 638. Dr. Schneider testified: ''I don't believe it is in there.'' *Id.* Next, the Government asked Dr. Schneider where in the transcript Respondent had measured RL's respiration. *Id.* Dr. Schneider replied: ''I believe it's not in the transcript.'' *Id.*[29]

The Government then asked Dr. Schneider to point to where in the transcript Respondent had measure RL's hip flexion; Dr. Schneider acknowledged: ''It is not in there.'' *Id.* Likewise, when asked in reference to Respondent's documentation that RL was able to do a partial squat and bend at the waist, where in the transcript this had occurred, Dr. Schneider answered that ''I probably won't be able to find it.'' *Id.* at 639.

Turning to Dr. Schneider's letter, in which she wrote that ''[o]n April 9, 2008 Dr. Ruben conducted a physical and mental exam,'' Dr. Schneider interrupted the Government counsel before the latter even asked a question, testifying:

> [Y]ou're pointing out a discrepancy, right. And assuming, unless I spend a half hour looking through these records and seeing if I can find it, the physical exam, which I may not be able to, that would suggest that I made a mistake in writing that he did a physical exam on that visit.

Id. at 640. Likewise, when asked about her having noted in her letter, that Respondent's plan included obtaining an x-ray followed by a referral to an orthopedic surgeon, Dr. Schneider could not recall where in the transcript Respondent had told RL that she would need to get an x-ray. *Id.* at 641.

Regarding his treatment of RL, Respondent testified that she was able to do a partial squat, which he determined by watching her sit down in a chair. *Id.* at 920. With regard to how he had determined RL's pulse rate, Respondent testified:

> The pulse is determined by feeling the pulsation at the wrist. It's easy to do when you shake hands. If you hold the handshake for three or four to five seconds, you can tell a pulse. If you've done it a lot, it's fairly easy to tell within about ten to [fifteen percent] of what the pulse is. Pulses are not significant if—unless they are outside a couple of standard deviations. And you can tell that very quickly. If somebody is beating at 90 it only takes you, measuring with your fingertip two or three beats. If someone is beating at 30 and they're still standing up, it doesn't take long. Maybe a couple seconds. So I always shake hands with patients. I always hold their hand. Some of them may think it's weird, but I'm taking their pulse. I'm feeling their body temperature. I'm feeling their muscular strength. . . .
>
> Now if I'm concerned about their pulse being something that I can't really think is within the normal range, I may sit down and take their pulse for 15 seconds and sit there formally with them. Or if I can't find their pulse easily. But most people you can—with some practice, you can pretty much find it. You can pretty much hold their hand and you have the pulse.

Id. at 924–25. *See also id.* at 984 (testifying in response to Government's question: ''[h]ow long would a handshake last?,'' that ''[i]f you're holding their hand it often can last the three or four second[s] needed to kind of evaluate the pulse''); *id.* at 985–86 (testifying in response to Government's question ''what's a normal pulse range for your three second handshake?,'' that ''[a]ll you need to assess, if you're experienced at assessing, is a couple of beats'' and then maintaining that ''[i]t's more the rhythm. You don't have to actually count it. You can feel. If you feel two or three beats, you can really tell what—basically within ten—we're only interested in seeing . . . if somebody is within normal range.'').

However, on further questioning as to whether he had determined R.L.'s pulse using his three-second handshake technique, Respondent testified:

> Yes. If that was how I did it. That's—I was telling you that the three second handshake is one way to do it. I may have done it another way. I may have done it some other way but I would have touched the areas that would have given me the reading on the pulse.

Id. at 987.

As for how he determined RL's rate of respiration, Respondent testified that ''[y]ou can look at you or me, particularly if they don't have covering on their upper chest as in summer. This was in May. And you can watch the respirations. You can tell the respirations again, with an observation of a very short time. You can look and watch.'' *Id.* at 926. Respondent then stated that the ''normal range for resting respirations is probably 14 to 17 or something like that,'' and that ''[i]f it's not within a normal range, then you can do more definitive testing,'' including ''count[ing] them more clearly'' and ''listen[ing] to see if their lungs are clear.'' *Id.* at 927. *See also id.* at 987–88 (''I can tell a respiratory rate just from watching a person at any point in an interview where you're in the same room with them. Just by watching if their chest is moving.'').

As for his findings that RL was ''[a]ble to do partial squat and bend at waist,'' Respondent testified that this was essentially the chair test and that when ''ladies put down their purse[,] [t]hey reach over for that[,] [t]hey reach for things[,] [a]ll that is information about their movement.'' *Id.* at 928. On cross-

[28] In the letter, Dr. Schneider wrote with respect to RL that Respondent ''asked her about the quality of the pain, effect of exercise, what helps, diurnal course. He asked what she had tried and what medication worked. He asked about a history of alcohol or drug abuse. He obtained a social history. *He did a physical and mental exam.''* RX 23, at 1 (emphasis added). After discussing RL's second visit, Dr. Schneider asserted that ''[t]he transcripts were consistent with his chart notes,'' and that Respondent ''did a lot of things correctly, including excellent documentation, discussion with patient, asking about her past treatments for the pain problem, getting addiction history on first visit, dealing with her mental status, doing a physical exam on first visit, assessing and treating her smoking . . . , and talking with her about physical medicine options.'' *Id.*

So too with respect to M.L., Dr. Schneider wrote that Respondent ''did a lot of things correctly, including excellent documentation, discussion with the patient, asking about her alcohol use, dealing with her mental status, *doing a focused physical on first visit,* referring her for physical medicine and psychotherapy group, and documenting his thinking and his plan.'' *Id.* at 2 (emphasis added).

[29] Regarding whether a physician is required to take a patient's vital signs during a physical examination which is performed at a patient's initial visit, Dr. Schneider testified:

> That's usually done. Again, listening to heart and lungs in someone with low back pain is not really going to be all that helpful. It's just sort of a tradition to do it, let's say. So, yeah I would imagine you would get normal vital signs. And a lot of times the nurse does it, not the doctor so it doesn't even come up in the discussion on the transcript because it was done even before the doctor comes into the office. And that's actually the usual thing. That's [the] rule rather than the exception, that the medical assistant does the vital signs.

Tr. 664–65. Notably, in his testimony, Respondent did not maintain that an assistant or nurse took vital signs for him.

Moreover, while Dr. Schneider testified that observing the patient was ''part of the physical exam,'' she then acknowledged that ''[t]here are some things you need to do more directly; for example, you have to put your stethoscope on their chest and listen to their lungs and heart. You can't just look at them across the room and assess their heart function.'' *Id.* at 713. While Dr. Schneider testified that taking a pulse does not necessarily require a conversation, to do so she ''would take the patient's hand and with my fingers on their radial artery and count up how many times I feel it over a 15 second period'' and then multiply by four. *Id.* at 696.

examination, Respondent testified that he ''may not have'' asked RL to do a partial squat and ''probably would not have'' asked her to bend at her waist. *Id.* at 990. Respondent then testified that ''[a]nd if it's not here, I must have not asked it. But I gained the information through observation.'' *Id.*

And as for his finding that RL's hip flexor was ''R ¼, L ¾,'' Respondent testified that ''[f]our is a norm'' and that ''[i]t's more of an average of what was going on.'' *Id.* at 928. Continuing, Respondent explained: ''You know, I might of [sic] observed as she sat down she favored—she flexed one side more than—sat one way rath[er]—and guarded on [one] side. So that would be an estimation of that.'' *Id.* at 928–29. And regarding his finding RL's ''R hip tender with ROM [f]air,'' Respondent testified:

> Range of motion is how the hip moves. How the leg moves. You can watch that from the gait. You watch that from the movement. Tender would mean that I put my hand on her hip and may have pushed. May have said, ''is your pain here or is it[?]''

Id. at 929. Later, when asked on cross-examination whether he had actually asked RL to move her left leg so that he could observe her range of motion, Respondent, explained that:

> [o]ne of the tests I conduct is to have them walk in front of me . . . that shows me range of motion in their body. They move through the exam room. They sit. They stand. I shake their hands. I do all sorts of things that are range of motion tests.

Id. at 991.

On cross-examination, Respondent further testified that he did not do ''a more formal physical exam'' on RL, because he ''felt [he] gathered sufficient information to meet the needs for her first visit to begin to treat her and make a diagnosis and to make a basis for prescribing the limited amounts of medication that she was receiving.'' *Id.* at 982–83. Respondent then stated that he ''didn't perform more than what I did. But I told you—that's true.'' *Id.* at 983.

Likewise, with respect to M.L., the Government established that Respondent made findings in her patient record that she had a pulse of 80 beats per minute, a respiration rate of 18 breaths a minute, that she ''[h]a[s] decreased flexion and extension'' in her head, that her cranial nerves were intact, that her grip for both hands was a ⅔, and that she moved ''both arms in abduction and adduction.'' Tr. 650–52; RX 2, at 2. The Government then asked Dr. Schneider where in the transcript there was evidence that Respondent had performed these various tests. Tr. 653–56.

Dr. Schneider admitted that she did not see in the transcript where Respondent had taken M.L.'s pulse or measured her respiration. *Id.* at 653, 655. As for where Respondent had measured the extension and flexion of M.L.'s head, Dr. Schneider acknowledged that ''[i]t's not in there.'' *Id.* at 653. However, Dr. Schneider then testified ''that [it] is possible to tell from—sometimes from looking at a person.'' *Id.* Dr. Schneider also acknowledged that the transcript contained no indication that Respondent had done ''a formal'' cranial nerve examination, nor measured M.L.'s grip. *Id.* at 653–54. As for where in the transcript there was evidence that Respondent had ML move her arms, Dr. Schneider answered: ''[T]hat again, he may have seen just watching her.'' *Id.* at 654.

Next, the Government asked Dr. Schneider whether Respondent could rely on Dr. Skinner's examination of ML. More specifically, the Government asked:

> Q. Okay. And in your experience, is it acceptable to replace your own physical examination of the patient with the examination of someone else in your office?
>
> A. That's a good question and I don't have an exact answer because that doesn't often come up. I suppose if it's someone else who's skilled who is doing the physical exam that might be appropriate. I don't know.

Id. at 654–55.[30]

Next, the Government noted that in her letter, Dr. Schneider had stated that Respondent ''did a focused physical exam on the first visit of'' ML and asked Dr. Schneider ''where in the transcript does [Respondent] conduct a focused physical of [ML] on this occasion?'' [31] *Id.* at 655–56. Dr. Schneider answered: ''I don't see it.'' *Id.* at 656. And with regard to Dr. Schneider's statement in her letter that Respondent ''had excellent documentation of his treatment of'' ML, Dr. Schneider acknowledged that her definition of excellent documentation does not include documenting findings ''that were not actually discerned during the course of a visit.'' [32] *Id.*

Regarding ML, Respondent testified that he observed her gait and walking during his evaluation of her and that he did not do any formal test of her reflexes. *Id.* at 957. He further testified that he ''could see that there was some difficulty she had with movement of her head, range of motion,'' but that ''she did not have any neurological findings that I could—from a review of [her] cranial nerves.'' *Id.* at 958. Moreover, he acknowledged that he did not use any ''instruments to measure her flexion of her head,'' and that he had measured her grip by shaking her hands. *Id.* at 998–99. However, Respondent then stated that ''there may have been some other way'' he used to ''sense[] her grip strength,'' and that he ''probably . . . t[ook] her hands in [his] hands.'' *Id.* at 999.

And as for whether he had asked ML to move her arms in abduction or adduction, Respondent testified that ''I may have handed her something or in that sense made a prompt to move them or I may have just observed her in her natural moving around the room, sitting down, getting up, picking things up to do. It's possible that I handed her something purposefully to see if she could reach. Sometimes I do that.'' *Id.* at 1000. Respondent then testified that he did not know how he tested this,

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[30] In discussing the various instances in which Dr. Schneider acknowledged that the transcripts of the undercover visits contained no indication that Respondent had performed various tests or discussed various matters with the patients which he documented in the medical records, the ALJ noted Dr. Schneider's testimony that ''parts of the written transcript were unintelligible.'' R.D. 57 (citing Tr. 693–97). Dr. Schneider conceded, however, that she did not listen to the recordings. Tr. 711. Nor, apparently, did the ALJ listen to any of the recordings, as notwithstanding that they were part of the record, the R.D. contains no indication that he did so. However, my Office has listened to them and has concluded that none of the unintelligible parts are of sufficient duration to support the possibility that Respondent actually performed various tests or had various discussions which he documented in the patient records as having done but which did not appear in the transcripts.

[31] Regarding what constitutes ''a focused physical exam,'' Dr. Schneider testified:

> It's when you concentrate on one particular part of the body. So for example, if someone has back pain, you watch how they get up, you watch how they sit down, you watch how they move, you watch how they pick up something and you can get some conclusions without doing a formal one. Ideally, you'd want to do a formal one, but it is possible to gather information from observing the patient.

Tr. 664.

[32] In its Exceptions, the Government also cites to its cross-examination of Dr. Schneider regarding the statements in her letter that, at ML's second visit, Respondent performed ''a focused physical exam'' and that ML had ''said her pain had decreased to 3/10 on [the] current dose.'' Exceptions at 3–4 (citing Tr. 662–64); *see also* RX 23, at 2. When questioned about these statements in her letter, Dr. Schneider conceded that the transcript did not reflect that Respondent had done a focused physical exam, but added that ''he could have been observing her as he talked with her.'' Tr. 664. Dr. Schneider also acknowledged that the transcript contained no indication that ML had said her pain had decreased to three out of ten. *Id.* at 663. While in her letter, Dr. Schneider made no mention as to whether Respondent had tested ML's grip at the second visit, Dr. Schneider acknowledged that the transcript contained no indication that he had tested ML's grip even though he documented in the progress note having done so. *Id.* at 663; *see also* RX 2, at 1.

because he did not ''remember specifically.'' *Id.*

Regarding the scope of the examination he performed on M.L., Respondent explained that:

> The focus on this patient was not a hip. It was neck and back. So the focused examination in my focus would have been on her mobility and her movements and her functions in that area. So that would be—I'd be looking at upper extremities. That there was no wasting of her arms. I could see her, I believe from this examination, I could see her arms and movement of her arms and movement of her head and again, we talked about how we can do pulse and we can do respirations. We talked about gait. That didn't seem to be the main issue.
> *Id.* at 959.

Respondent further explained that Dr. Skinner is a naturopath ''who is very adept at diagnosing neck and shoulder injuries.'' *Id.* at 963. He testified that he ''brought her in to look at [ML] and give me a second opinion.'' *Id.* Respondent then explained that:

> She put her hands on the patient. I put my hands on the patient. We were looking for muscle spasm. We were looking for range of motion and Dr. Skinner then probably did do some kind of stretching or some kind of manipulation to see if that would relieve some of the spasm which was probably in this patient's neck.
> *Id.*[33]

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to ''dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . *has committed such acts* as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4) (emphasis added). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
> (2) The applicant's experience in dispensing * * * controlled substances.
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
> (5) Such other conduct which may threaten the public health and safety.
> *Id.* § 823(f).

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.; see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222 (quoting *Hoxie,* 419 F.3d at 482)).[34]

The Government has the burden of proving, by a preponderance of the evidence, that the requirements for revocation or suspension pursuant to 21 U.S.C. § 824(a) are met. 21 CFR 1301.44(e). However, ''once the [G]overnment establishes a prima facie case showing a practitioner has committed acts which render his registration inconsistent with the public interest, the burden shifts to the practitioner to show why his continued registration would be consistent with the public interest.'' *MacKay,* 664 F.3d at 817 (citing *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (citing cases)).

Having considered all of the factors, I agree with the ALJ's conclusion that the Government's evidence with respect to factors two (Respondent's experience in dispensing controlled substances) and four (Respondent's compliance with applicable controlled substance laws), establishes that Respondent has committed acts which render his registration inconsistent with the public interest.[35] 21 U.S.C. 824(a)(4). While I also agree with the ALJ's conclusion that Respondent has accepted responsibility for his misconduct and put forward evidence as to his remedial measures, I reject the ALJ's recommended sanction because the ALJ failed to consider the egregiousness of Respondent's misconduct and the Agency's interest in deterring others from engaging in similar acts. Accordingly, I will order that Respondent's registration be suspended for a period of one year.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an

[33] The Government also introduced an affidavit from BO, a person who, in March 2009, saw Respondent for her depression. GX 19. In her affidavit, BO related that ''[w]hile in the waiting room, I heard other patients speaking about oxycodone'' and that ''these other patients were exchanging information regarding which pharmacies had stock of certain dosages and in what quantities.'' *Id.* at 1. Even assuming that BO's affidavit bears substantial indicia of reliability (such that it could constitute substantial evidence), there is no evidence that Respondent was aware of this discussion. Moreover, while BO also related that she overheard a conversation between Respondent and an employee in which the former stated that ''a pharmaceutical representative had just informed him that he could make a lot of money if he were to dispense medications directly from his office, because [he] would get a percentage of money from each prescription filled in-house,'' even assuming that this constitutes an admission, it does not establish any wrongdoing. *Id.* at 2. Finally, while BO stated that Respondent gave her prescriptions for Ambien (zolpidem), a schedule IV controlled substance, as well as Cymbalta and Depakote, two non-controlled medications, the record does not establish that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing the Ambien. *Id.* at 2–3.

[34] In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

[35] As for factor one, the recommendation of the state licensing authority, the ALJ found that the AMB's restoration of Respondent's authority to prescribe opioids in August 2011, ''[w]hile not dispositive . . . does weigh against a finding that Respondent's continued registration would be inconsistent with the public interest.'' R.D. at 48. Even assuming that the Board's restoration constitutes a recommendation to the Agency that Respondent's registration be continued, DEA has repeatedly held that while a practitioner's possession of state authority constitutes an essential condition for maintaining a registration, *see* 21 U.S.C. §§ 802(21) & 823(f), it '' 'is not dispositive of the public interest inquiry.' '' *George Mathew,* 75 FR 66138, 66145 (2010), *pet. for rev. denied Mathew* v. *DEA,* No. 10–73480, slip op. at 5 (9th Cir., Mar. 16, 2012); *see also Patrick W. Stodola,* 74 FR 20727, 20730 n.16 (2009); *Robert A. Leslie,* 68 FR 15227, 15230 (2003). As the Agency has long held, ''the Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.'' *Mortimer Levin,* 57 FR 8680, 8681 (1992). Thus, this factor is not dispositive either for, or against, the continuation of Respondent's registration. *Paul Weir Battershell,* 76 FR 44359, 44366 (2009) (citing *Edmund Chein,* 74 FR 6580, 6590 (2007), *pet. for rev. denied Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008)).

Regarding factor three, there is no evidence that Respondent has been convicted of an offense related to the manufacture, distribution or dispensing of controlled substances. However, as there are a number of reasons why a person may never be convicted of an offense falling under this factor, let alone be prosecuted for one, ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is thus not dispositive. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011).

individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Under the CSA, it is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to act ''in the usual course of . . . professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *See United States* v. *Moore,* 423 U.S. 122, 142–43 (1975); *United States* v. *Lovern,* 590 F.3d 1095, 1100–01 (10th Cir. 2009); *United States* v. *Smith,* 573 F.3d 639, 657 (8th Cir. 2009); *see also* 21 CFR 1306.04(a) (''an order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances'').

As the Supreme Court has explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *Moore,* 423 U.S. 122, 135, 143 (1975)).

Both this Agency and the federal courts have held that ''establishing a violation of the prescription requirement 'requires proof that the practitioner's conduct went ''beyond the bounds of any legitimate medical practice, including that which would constitute civil negligence.'' ' '' *Laurence T. McKinney,* 73 FR 43260, 43266 (2008) (quoting *United States* v. *McIver,* 470 F.3d 550, 559 (4th Cir. 2006). *See also United States* v. *Feingold,* 454 F.3d 1001, 1010 (9th Cir. 2006) (''[T]he *Moore* Court based its decision not merely on the fact that the doctor had committed malpractice, or even intentional malpractice, but rather on the fact that his actions completely betrayed any semblance of legitimate medical treatment.''); *Jack A. Danton,* 76 FR 60900, 60904 (2011) (finding violations of 21 CFR 1306.04(a), in the absence of expert testimony, ''where a physician has utterly failed to comply with multiple requirements of state law for evaluating her patients and determining whether controlled substances are medically indicated and thus has '''completely betrayed any semblance of legitimate medical treatment'''') (quoting *McKinney,* 73 FR at 43266 (quoting *Feingold,* 454 F.3d at 1010)).

However, as the Agency has held in multiple cases, ''the Agency's authority to deny an application [and] to revoke an existing registration . . . is not limited to those instances in which a practitioner intentionally diverts a controlled substance.'' *Bienvenido Tan,* 76 FR 17673, 17689 (2011) (citing *Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (1998)); *see also Dewey C. MacKay,* 75 FR at 49974. As *Caragine* explained: ''[j]ust because misconduct is unintentional, innocent, or devoid of improper motive, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify'' the revocation of an existing registration or the denial of an application for a registration. 63 FR at 51601.

''Accordingly, under the public interest standard, DEA has authority to consider those prescribing practices of a physician, which, while not rising to the level of intentional or knowing misconduct, nonetheless create a substantial risk of diversion.'' *MacKay,* 75 FR at 49974; *see also Patrick K. Chau,* 77 FR 36003, 36007 (2012). Likewise, ''[a] practitioner who ignores the warning signs that [his] patients are either personally abusing or diverting controlled substances commits 'acts inconsistent with the public interest,' 21 U.S.C. § 824(a)(4), even if [he] is merely gullible or naïve.'' *Jayam Krishna-Iyer,* 74 FR 459, 460 n.3 (2009); *see also Chau,* 77 FR at 36007 (holding that even if physician ''did not intentionally divert controlled substances,'' State Board Order ''identified numerous instances in which [physician] recklessly prescribed controlled substances to persons who were likely engaged in either self-abuse or diversion'' and that physician's ''repeated failure to obtain medical records for his patients, as well as to otherwise verify their treatment histories and other claims, created a substantial risk of diversion and abuse'') (citing *MacKay,* 75 FR at 49974).

In this matter, the Government alleged that Respondent violated the prescription requirement with respect to both the patients who were the subject of the AMB Orders and the undercover visitors. Notably, in his post-hearing brief, Respondent acknowledges that ''the First and Second Consent Order establish violations of Arizona State law, as explained more fully in the Orders.'' Resp's. Proposed Findings of Fact, Conclusions of Law and Argument 33. Moreover, in his post-hearing brief, Respondent states that he ''is prepared to concede that the Government established a prima facie case for revocation . . . on the basis of the portions of the Second Consent Order . . . that he did not challenge for factual insufficiency.'' *Id.* at 34. However, with respect to the first AMB Order, which involved his treatment of DK, while Respondent acknowledged that he ''should have obtained past medical records sooner'' and should have more carefully monitored her use of medication, he rejects other findings of the AMB. *Id.* at 38.

The ALJ found that ''Respondent issued controlled substance prescriptions to multiple patients referenced in the 2009 Agreement and 2010 Order for other than a legitimate medical purpose and outside the usual course of professional practice in violation of applicable state and federal law.'' ALJ at 54–55 (citing 21 CFR 1306.04(a); Ariz. Rev. Stat. § 32–1401(27)(a), (e) & (q)). Indeed, notwithstanding that the ALJ improperly allowed Respondent to challenge the Board's findings both as to historical facts regarding his treatment of the various patients and the standard of care, Respondent's evidence only addressed four of the patients. Thus, even were I to give weight to this evidence (which—like the ALJ—I do not), the Government's evidence still establishes that Respondent committed violations of the prescription requirement with respect to numerous patients, as Respondent himself concedes.

To be clear, the Board's findings with respect to many of the patients establish not simply that Respondent ''committed malpractice, or even intentional malpractice, but rather . . . that his actions completely betrayed any semblance of legitimate medical treatment,'' *Feingold,* 454 F.3d at 1010, and thus, that he intentionally or knowingly diverted controlled substances. More specifically, the AMB found that the standard of care requires that when treating a patient for chronic pain, a physician must obtain prior records for the past treatment of the pain, as well as obtain any objective measures for the cause of pain, and that Respondent failed to do so. Also, the AMB found that Respondent failed to adequately document his reasoning for prescribing high dose opioids as well as other drugs he added, as well as his treatment plan.

Moreover, even Respondent's Expert acknowledged that in various instances, Respondent failed to perform a physical examination on the first visit, notwithstanding that Arizona law clearly required that he do so. Tr. 597–98; *see also* Ariz. Rev. Stat. § 32–1401(27)(ss) (deeming it ''[u]nprofessional conduct'' to ''[p]rescrib[e], dispens[e], or furnish[] a

prescription medication . . . to a person unless the licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship'').

The AMB also found that Respondent violated the standard of care because he prescribed high dose opioids without performing *adequate* physical exams. For example, with respect to ML, the AMB found that Respondent diagnosed him with spondylolisthesis based on ML's report and prescribed oxycodone to him, but did not perform a facet, sacroiliac joint, myofascialpain or neural flexes examination, nor test him for weakness or numbness. The Board also found that Respondent did not order various tests such as flexion extension films or an MRI scan, and that he also failed to obtain ML's past medical records and diagnostic studies. Most significantly, the Board found in ML's chart an x-ray, dated eighteen months after Respondent diagnosed ML as having spondylolisthesis, which stated: ''no evidence of spondylolisthesis.''

Yet, notwithstanding that the x-ray contradicted his diagnosis and his failure to conduct necessary tests, the Board found that Respondent provided ML with multiple early refills of oxycodone from February through December 2008.[36] Moreover, the Board found that while in June 2008, Respondent was notified that ML was undergoing methadone treatment at a facility, he did not obtain ML's records from the facility. And while in January 2009, Respondent discharged ML from opioid therapy, two months later he resumed prescribing high does opioids without documenting an explanation. The Board also found that even after the 2009 Order placed Respondent on probation by the 2009 Order, he continued to prescribe high dose opioids to ML ''for pain secondary to spondylolisthesis until September 2009.''

In addition, Respondent's Expert acknowledged that Respondent had continued to prescribe oxycodone to ML, notwithstanding several aberrant urine drug tests. *See* Tr. 675–77. For example, ML tested positive for cocaine, as well as benzodiazepines (twice) which Respondent had not prescribed to him on previous visits. Still another time, ML tested negative for oxycodone, notwithstanding that Respondent continually prescribed the drug to ML and even provided him with numerous early refills.

As the AMB found, prior to initiating high dose opiate therapy, the standard of care requires a physician to perform an adequate exam for pain generators. Moreover, the AMB found that the standard of care requires that a physician obtain the patient's past medical records and diagnostic studies, offer the patient adjunct treatments that include non-opioid medications and physical therapy, address aberrant drug seeking behaviors and refrain from prescribing more than one month of schedule II prescriptions at a time. The Board found that Respondent deviated from the standard of care because he did not perform an adequate exam prior to initiating high dose opiate therapy, he did not obtain ML's past medical records and diagnostic studies, he did not offer adjunct treatments, he did not address ML's aberrant drug-seeking behaviors, nor did he refrain from prescribing more than one month of schedule II prescriptions at a time.[37]

While the Board also found that Respondent violated Arizona law and committed unprofessional conduct by failing to maintain adequate records, the Board's findings establish that Respondent did far more than fail to comply with recordkeeping requirements. Rather, the Board's findings establish that Respondent's prescribing of oxycodone to ML '''completely betrayed any semblance of legitimate medical treatment''' and thus violated 21 CFR 1306.04(a). *Danton,* 76 FR 60900, 60904 (2011) (quoting *McKinney,* 73 FR at 43266 (quoting *Feingold,* 454 F.3d at 1010)).

As the Supreme Court explained in *Moore* in upholding the criminal conviction of a physician for unlawfully distributing controlled substances under circumstance similar to those found by the Board:

> The evidence presented at trial was sufficient for the jury to find that respondent's conduct exceeded the bounds of 'professional practice.' As detailed above, he gave inadequate physical examinations or none at all. He ignored the results of the tests he did make. He . . . took no precautions against . . . misuse and diversion. He did not regulate the dosage at all, prescribing as much and as frequently as the patient demanded.

Moore, 423 U.S. at 142–43.

Likewise, the Board found that Respondent prescribed multiple controlled substances including OxyContin 40 mg, oxycodone 30 mg and Adderall to JF for conditions including chronic pain, attention deficit disorder, and obsessive compulsive disorder. While JF reported at her first visit (August 31, 2007) that her current prescriptions were OxyContin 40 mg and oxycodone 30 mg, the Board found that he did not obtain her past medical records to confirm the diagnosis and her prescriptions; he also did not document having performed a physical examination. Yet he prescribed 90 tablets of OxyContin 40 mg and 45 tablets of oxycodone 30 mg to her. Moreover, in October 2007, Respondent added Adderall, another schedule II controlled substance, to her ''medication regime without any rationale for the medication.'' GX 18, at 5.

The Board further found that on multiple occasions during the course of her treatment, JF reported that her prescriptions had been stolen or damaged, that she had run out of medication, and that a pharmacy had refused to fill a prescription because of different handwriting. Nonetheless, Respondent continued to prescribe the drugs and increased the doses of oxycodone and Adderall. As the Board found, there was no documentation that Respondent ordered any laboratory studies to support his continued prescribing of the three drugs. Nor was there any documentation that Respondent had JF undergo urine drug screens to determine if she ''was taking the medication as prescribed and/or whether she was utilizing illicit substances.'' *Id.* at 6.

With respect to his prescribing of OxyContin and oxycodone to JF for the treatment of chronic pain, the Board found that the standard of care ''requires a physician to review diagnostic studies and interventions, assess the chronic pain complaint prior to initiating an opioid trial, appropriately monitor the patient's use of the medication, and obtain appropriate therapeutic and laboratory test results that support the diagnosis.'' *Id.* The Board further found that ''Respondent deviated from the standard care because he did not review past medical records and he did not order appropriate tests or consultations for JF.'' *Id.*

As for his treatment of JF's psychiatric conditions, the Board found that

[36] The Board also found that Respondent provided multiple early refills of oxycodone to ML during the period from January through December 2007. It further found that while in November 2007, Respondent had determined that ML had self-escalated his oxycodone dosing, Respondent did not document having cautioned ML to adhere to the dosing instructions.

[37] The Board found that the standard of care when treating a patient for chronic pain is to obtain objective measures as to the cause of pain. 2010 Order, at 16. It found that Respondent violated the standard of care by continuing to treat ML's reported pain with high-dose opioids without obtaining objective measures for the cause of his pain, and that his conduct could result in the perpetuation of ML's drug-seeking behavior/addiction or an overdose. *Id.* In addition, the Board found that there was potential for diversion or abuse of the oxycodone. *Id.* at 10.

Respondent ''did not perform an adequate psychiatric evaluation'' of her and thus ''deviated from the standard of care.'' *Id.* The Board also found that Respondent deviated from the standard care because he prescribed Adderall to JF without ''perform[ing] tests to confirm the diagnosis and the necessity of the medication'' and did not monitor her ''use of the medication.'' *Id.* And because ''[t]here was no collateral information to support prescribing Adderall,'' the Board concluded that this ''creat[ed] a potential for misdiagnosis, addiction, abuse, misuse, overdose, and diversion.'' *Id.*

Finally, the Board found that Respondent's records for JF ''were inadequate because he did not obtain [her] past medical records, he did not document a physical examination prior to prescribing medications and he did not document any rationale for the prescriptions, dosage escalations, and additions of medication.'' *Id.* at 7. Here again, the Board's findings establish that Respondent's prescribing of controlled substances to JF '''completely betrayed any semblance of legitimate medical treatment''' and support the conclusion that he acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed schedule II opioids (OxyContin and oxycodone) and Adderall (a schedule II stimulant) to her. *See* 21 CFR 1306.04(a). Accordingly, I hold that Respondent knowingly diverted controlled substances to JF.

Of similar consequence, the Board found that Respondent prescribed both OxyContin and oxycodone to patients DD, SS, AM, and MF ''based on [their] reported history and complaints of chronic pain.'' *Id.* at 7. Here again, the Board found that ''[t]here was no documentation that Respondent obtained the patients' past medical record to confirm the diagnoses,'' that ''he did not perform adequate physical examinations,'' and that he did not ''order diagnostic and laboratory studies.'' *Id.*

The Board further found that while ''Respondent provided early refills and escalated the patients' doses of [o]xycodone and OxyContin,'' he neither ''document[ed] a rationale to support his diagnosis or [his] prescribing.'' *Id.* Nor did he ''perform[] any urine drug screens to determine whether the[se] patients were taking the medications as prescribed and/or illicit substances.'' *Id.*

Here again, the Board found that ''Respondent deviated from the standard of care because he did not review [the four patients'] past diagnostic studies and interventions, assess and confirm their chronic pain complaints prior to initiating an opioid trial, appropriately monitor their use of the medication, or obtain appropriate therapeutic and laboratory test results to support his diagnoses of chronic pain.'' *Id.* at 8. The Board further found that because ''[t]here was no collateral information to support prescribing opioids to [the four patients],'' Respondent ''creat[ed] [the] potential for misdiagnosis, addiction, abuse, misuse, overdose, and diversion.'' *Id.*

Finally, the Board found that ''Respondent's records were inadequate because he did not obtain [the four patients'] past medical records; he did not document adequate physical examinations or laboratory and diagnostic studies prior to prescribing medications; he did not obtain any diagnostic studies to support his continued prescribing of medications[;] and he did not document any rationale for [the] prescriptions and dosage escalations.'' *Id.* at 8–9. Here again, the Board's findings with respect to these four patients establish more than that Respondent failed to keep adequate records. Rather, they establish that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed OxyContin and oxycodone to DD, SS, AM, and MF.[38] 21 CFR 1306.04(a).

The Board also made findings regarding Respondent's prescribing of Adderall to two patients (AL and KF) that establish violations of the prescription requirement. Specifically, the Board found that Respondent diagnosed AL with Attention Deficit Hyperactivity Disorder and prescribed Adderall to her. GX 18, at 2. The Board found, however, that Respondent deviated from the standard of care because he did not perform an adequate psychiatric evaluation of AL. *Id.* Moreover, the Board found that there was no documentation that Respondent obtained her past medical records, her history of alcohol or substances abuse, her psychiatric history or that he ''perform[ed] a functional assessment to support the diagnosis and prescription.'' *Id.* Respondent also failed to document a treatment plan. *Id.*

The Board further found that over a twenty-seven month period, ''Respondent provided AL with frequent, early and escalated doses of Adderall'' but did not document a rationale for doing so. *Id.* And the Board found that ''on several occasions[,] AL attempted to refill her Adderall prescription early,'' yet Respondent did not document that he ''investigated or addressed AL's rationale for doing so.'' *Id.* In addition, Respondent prescribed Lorazepam, a schedule IV benzodiazepine to AL, ''without documenting a rationale for'' doing so and that he did not ''discuss[ ] the risks and benefits of taking'' the drug. *Id.* Finally, the Board found that there ''was no documentation that Respondent ordered any laboratory studies to support his continued prescribing of Adderall or any urine drug screens to determine whether AL was taking the medication as prescribed and/or illicit substances.'' *Id.*

Thus, in addition to finding that Respondent deviated from the standard of care because he failed to perform an adequate psychiatric evaluation of AL, the Board found that he committed an additional deviation ''because he did not confirm the diagnosis and the necessity of the medication and he did not monitor AL's use of the medication.'' *Id.* at 3.[39] These findings support the conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed Adderall to AL. 21 CFR 1306.04(a).

Likewise, with respect to KF, the Board found that Respondent prescribed Adderall to her, yet ''[t]here was no documentation that [he] obtained her past medical record or ordered any laboratory tests that would qualify KF for a diagnosis to support the use of Adderall.'' GX 18, at 4. Moreover, the Board found that ''Respondent prescribed frequent early refills without documenting any rationale for the prescriptions,'' and that he ''increased KF's dose from 20mg to 30 mg without any rationale'' for doing so. *Id.* Also, the Board found that ''[t]here was no documentation that Respondent ordered any laboratory studies to support his

[38] Even if I were to give weight to Dr. Schneider's testimony in which she maintained that the Board's consultant made findings with respect to patients AM, MF and SS that were contradicted by the respective patient's chart, I would still adopt the Board's findings. As explained above, the AMB's findings cited multiple ways in which Respondent deviated from the standard of care, and Respondent offers no argument as to why, even if the Board's consultant may have overlooked several items, these errors would have materially affected the Board's conclusions. And here again, Respondent could have, and should have, presented Dr. Schneider's evaluation to the Board.

[39] Finally, the Board found that Respondent failed to maintain adequate records ''because there was no documentation of the initial Adderall prescription, no documented initial plan of treatment, the psychiatric evaluation was inadequate, there was no documented rationale for his prescribing of several medications, and several of his progress notes were illegible.'' GX 18, at 3.

continued prescribing of Adderall or any urine drug screens to determine whether KF was taking the medications as prescribed and/or any illicit substances.'' *Id.*

The Board thus found that ''Respondent deviated from the standard care because he did not obtain prior medical records, perform tests to confirm the diagnosis and the necessity of the medication,'' ''did not perform an adequate psychiatric evaluation for KF,'' and ''did not monitor [her] use of the medication.'' *Id.* The Board also found that because ''[t]here was not collateral information to support prescribing Adderall,'' Respondent ''created [the] potential for misdiagnosis, addiction, abuse, misuse, overdose and diversion.''[40] *Id.* The Board's findings thus also support the conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing Adderall to KF. 21 CFR 1306.04(a).

The Board also made extensive findings regarding Respondent's prescribing of schedule II opioids to WO for the latter's chronic pain over an eighteen-month period. GX 18, at 11–13. While WO had previously been treated by another physician, who prescribed to him both oxycodone and morphine sulfate, and Respondent reviewed several imaging studies, the Board found that the studies ''did not support the amount of opioid medications [Respondent] prescribed to WO.'' *Id.* at 11, 13. The Board also found that ''[t]here was no documentation that Respondent performed a neurological or musculoskeletal examination or ordered any imaging studies of WO's lumbar spine or laboratory studies prior to continuing the treatment of WO's previous treating physician.'' *Id.* at 11.

Moreover, the Board found that Respondent both increased the dose of oxycodone and added an additional drug, MS Contin, the dose of which he also ''subsequently increased,'' and yet did not document having ''performed any physical examinations or [having] obtained any radiological studies to support his increased opioid prescribing.'' *Id.* at 12. Nor did he document ''a rationale for the increase'' in the MS Contin dosing. *Id.* The Board further found that later in his treatment of WO, Respondent further increased the dose of oxycodone ''to eight tablets per day without documenting a rationale for the increase.'' *Id.*

Next, the Board found that approximately one month after the latter increase in WO's oxycodone dosage, Respondent obtained a urine drug screen from WO. *Id.* However, the results were negative for oxycodone but positive for both methadone and codeine, even though Respondent had not prescribed either of the latter two drugs. *Id.* Moreover, WO's drug screen was positive for heroin. *Id.*

While the Board found that ''Respondent documented that he was aware of the positive'' test results, it further found that ''he did not adequately investigate or address the abnormal results, which include referring WO to an addiction medicine specialist or discontinuing the opioid prescriptions.'' *Id.* The Board thus also found that ''Respondent allowed WO to continue a pattern of illicit substance use and opioid misuse.'' *Id.* at 13.

Accordingly, the Board found that Respondent ''deviated from the standard of care'' because ''he did not perform an adequate workup of WO prior to continuing the treatment of his previous treating physician,'' prescribed opioids in amounts that were not supported by ''the physical examination and radiological data,'' and ''did not adequately investigate or address WO's abnormal urine drug screens.'''' *Id.* at 12–13.[41] Here again, the Board findings support the conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing controlled substances to WO.[42] 21 CFR 1306.04(a).

Finally, in the 2009 Order, the Board made extensive findings regarding Respondent's prescribing to DK, a self-referred patient who complained of lower back pain and psychiatric issues. GX 17, at 4. At her initial visit, DK reported that she was currently taking OxyContin 160 mg, three times per day; oxycodone 30 mg, two tablets, one to two times daily; and Valium; RX 30, at 40. She also reported that imaging studies and x-rays had been done three years earlier. *Id.* However, while at the initial visit, DK said she would provide her medical records, including these imaging studies, to Respondent, and Respondent asked her to do so on four additional visits, she did not comply for more than a year. *Id.; see also* GX 17, at 4. Regarding DK's noncompliance, Respondent testified that she either ''could not remember or give us the name [of her previous physician] or produce records.'' Tr. 851–52; *see also id.* at 1027.

Yet, notwithstanding her non-compliance, Respondent issued monthly prescriptions to DK for OxyContin 80 mg (initially for 180 tablets, but after several months, increasing to 210 tablets) and oxycodone 30 mg (typically 180 tablets). RX 30, at 40. This continued for nearly one year and until Respondent was notified that another physician had recently discharged her (in the prior month, no less) for violating her pain contract by using cocaine, as well as methadone which had not been prescribed to her. Indeed, only then did he take any action. Notably, Respondent failed to do any urine drug screens on DK from November 2006, when he first began prescribing to her, until June 3, 2008.

According to the Board, under the standard of care, a physician who ''continu[es] high dose opioid prescriptions for a self-referred, chronic pain management patient . . . who reports currently being prescribed high dose opioid medications,'' must base the prescriptions ''on proper indications, including previous medical records and verified previous prescriptions, and/or contact with the previous prescribing physician.'' GX 17, at 5. The Board thus found that ''Respondent deviated from the standard of care by prescribing high dose opioids to DK without proper indications.'' *Id.* Also, the Board found that the standard of care requires that a physician ''treating a chronic pain patient [with] known or suspected substance abuse problem . . . to utilize objective measures to monitor compliance.'' *Id.* The Board thus also found that ''Respondent deviated from the standard of care by failing to timely use objective measures, such as urine drug tests, to assess DK's compliance with her treatment even after he was aware of her cocaine addiction.'' *Id.* The deviations of the standard of care found by the Board are sufficient to support the conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in

[40] Here again, the Board found that ''Respondent's records were inadequate because he did not obtain KF's past medical records, he did not document a physical examination prior to prescribing medications, he did not document any rationale for prescriptions, dosage escalations, and additions of medication.'' *Id.* at 5.

[41] The Board also found that Respondent failed to maintain adequate records ''because there was no documentation that [he] performed neurological or musculoskeletal examination or ordered any imaging or laboratory studies prior to continuing the treatment and there was no documented rationale for his excessive prescribing of opioids.'' GX 18, at 13.

[42] It is noted that the Board faulted Respondent because he did not obtain imaging studies of WO's lumbar spine. GX 18, at 11. My conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose is based on the totality of the Board's findings and the multiple deviations of the standard of care which it found.

prescribing OxyContin and oxycodone to DK.[43] *See* 21 CFR 1306.04(a).

The Undercover Patients

The ALJ concluded that the Government did not establish that the Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed controlled substances to RL and ML, the two undercover visitors. R.D. at 60. The Government takes exception to these findings, contending that ''[t]he evidence . . . shows that, on four occasions, Respondent prescribed controlled substances to [ML and RL] without ever conducting a physical examination,'' and thus the prescriptions were issued in violation of Ariz. Rev. Stat. § 32–1401(27)(ss), which provides that it is ''unprofessional conduct'' to prescribe ''a prescription medication . . . to a person unless the licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship,'' and thus also violated federal law. Exceptions at 3 (also citing 21 CFR 1306.04(a)).

As support for its contention, the Government cites the testimony of a Special Agent as to hearsay statements that were made by the two confidential sources to the effect that Respondent did not perform a physical examination on them. *Id.* (citations omitted). It also argues that ''Respondent's own expert testified that Respondent failed to conduct a physical examination of either CS1 or CS2 prior to issuing them prescriptions for controlled substances.'' *Id.* (citations omitted).

As for the hearsay statements of the confidential sources, the Government offered no evidence to support a finding that each statement is sufficiently reliable to constitute substantial evidence. *See Carlos Gonzalez,* 76 FR 63118, 63119 (2011) (citing various appellate decisions regarding factors which support a finding that hearsay statements are sufficiently reliable). And while Respondent's Expert admitted that she did not see in the transcripts of the undercover visits where Respondent had performed a physical examination at either RL or ML's first visit, as found above, I cannot ignore that the transcripts and recordings manifest that at each of the CS's first visits, either Respondent (or Dr. Skinner) palpated them in the area of their body which was the source of their purported pain complaint. Thus, the testimony of Respondent's Expert does not corroborate the hearsay statement of either RL or ML.

It may be that the physical exams Respondent performed on RL and ML were totally inadequate to validly diagnose them as having a legitimate pain condition and to support the prescribing of controlled substances. However, while Arizona law requires that a physician perform a physical exam before he initially prescribes a drug, it does not set forth what is required to constitute an adequate examination. Moreover, while Respondent's Expert repeatedly attempted to minimize his misconduct,[44] thus suggesting a less than objective portrayal on her part of Respondent's prescribing practices, even were I to reject the ALJ's credibility finding regarding her testimony that Respondent's prescribing to the two CSs was ''well within the standard of care,'' I would still reject the Government's contention because it had the burden of proving by substantial evidence that these four prescriptions violated 21 CFR 1306.04(a).[45] Here, because the transcripts clearly showed that Respondent palpated (or observed Dr. Skinner palpate[46]) the CSs, and the transcripts otherwise contain no statements by either the CSs or Respondent indicating that either CS was not a legitimate patient, expert testimony was required to show that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed controlled substances to the two CSs. Accordingly, I reject the Government's exception and adopt the ALJ's findings with respect to the undercover patients.

Sanction

Based on his findings that Respondent acted outside of the usual course of

[43] While the Board faulted Respondent for his ''continu[ing] to prescribe opiates to DK for her back pain'' after she was referred to Behavioral Health, as well as his continued prescribing of opiates after ''he learned that she had successfully completed inpatient opioid detoxification,'' GX 17, at 5; the Board did not find that either course of conduct constituted a deviation from the standard of care. *See id.* Nor did the Government offer any expert testimony as to whether Respondent's prescribing of opiates following DK's referral to Behavioral Health or following her completion of inpatient opioid detoxification was within usual course of professional practice and lacked a legitimate medical purpose.

As for Respondent's continued prescribing to DK, notwithstanding that she purportedly could not remember the name of the physician who had previously (and likely was also continuing to prescribe to her), as well as her repeated failure to provide her medical records, the federal courts have held that knowledge can be inferred based on the ''willful blindness'' of a physician in ignoring various warning signs that a patient is either abusing or diverting drugs. *United States* v. *Katz,* 445 F.3d 1023, 1031 (8th Cir. 2006). *See also United States* v. *Jewell,* 532 U.S. 697, 702–704 (9th Cir. 1976) (discussing deliberate ignorance instructions, noting that ''Courts of Appeals reviewing the sufficiency of evidence have approved the premise that 'knowingly' in criminal statutes is not limited to positive knowledge, but includes the state of mind of one who does not possess positive knowledge only because he consciously avoided it'').

Even if I believed that Respondent was merely naïve or gullible in his treatment of DK, which I do not, I would conclude that Respondent is so irresponsible as to raise grave doubts as to his fitness to hold a registration.

[44] For example, in her letter of May 27, 2011, Dr. Schneider, in an apparent reference to the Board's findings, characterized Respondent's problematic practices as ''past minor deficiencies.'' RX 23, at 3. Likewise, in her testimony, she asserted that the Arizona Medical Board's guidelines on using controlled substances to treat chronic pain were not even minimum standards but were aspirational and ''to educate doctors.'' Tr. 588. She further asserted that physicians were ''being judged by standards of care that are current [but] that were not the standard of care at the time that those visits took place,'' *id.* at 586, as if the standards had actually changed between the time Respondent prescribed to the patients identified in the two AMB Orders and the period during which the Board conducted its review.

So too, when asked whether the standard of care requires a physician to obtain medical records before providing the first prescription, she asserted that she did not ''think that most doctors actually get the records before providing a first prescription.'' *Id.* at 589. While she then acknowledged that it was risky if patients ''come in and what they want is super high doses, . . . it's risky to let them walk out with a prescription in the absence of any documentation that they indeed were on that dose because that could be lethal,'' she then added that ''[t]he doses we're talking about with [Respondent] were often minimal doses,'' *id.,* as if the amounts and dosages he prescribed to DK at her first visit were minimal. Finally, while Dr. Schneider noted that there were instances in which Respondent did not do a physical exam on the first visit, this, notwithstanding the requirements of Arizona law, *see* Ariz. Rev. Stat. § 32–1401(27)(ss), is, in her view, just one of the ''things that could be improved'' because Respondent ''really need[s] education.'' Tr. 598.

[45] Put another way, it was not Respondent's burden to prove that the prescriptions were lawful. Thus, in the absence of probative and reliable evidence that the prescriptions were unlawful, Respondent had no obligation to refute the charge.

[46] The Government also asked Dr. Schneider as to whether Respondent could rely upon Dr. Skinner's examination of ML. Dr. Schneider testified that she did not ''have an exact answer because that doesn't often come up. I suppose if it's someone else who's skilled who is doing the physical that might be appropriate.'' Tr. 654–55. Dr. Schneider then added that she did not know. *Id.* at 655. However, it was the Government's obligation to establish that under the standard of care, a physician cannot observe another physician examine a patient and rely on those observations as part of performing a physical exam and not Respondent's obligation to show that it is within the standard of care.

As for the Government's contention that Respondent also failed to physically examine the CSs at their second visits, the Government offered no evidence that the standard of care requires that a physician perform a physical exam at each visit at which he prescribes a controlled substance. Indeed, the statute relied on by the Government suggests the opposite, as it permits prescribing where a physician ''has previously established a doctor-patient relationship.'' Ariz. Rev. Stat. § 32–1401(27)(ss).

professional practice and lacked a legitimate medical purpose in prescribing controlled substances to numerous patients, the ALJ found that the Government had met its *prima facie* burden of showing that ''Respondent has committed acts inconsistent with the public interest between 2006 and 2009.'' R.D. at 65. However, based on his finding that Respondent had ''credibly accepted responsibility for his past misconduct and demonstrated that he has implemented various corrective measures to ensure that his medical practice is consistent with the public interest,'' *id.* at 64, the ALJ recommended that Respondent's registration should be continued subject to the condition that he comply with all terms of the AMB's 2010 Order and notify the DEA field office of any changes in the terms and conditions of the AMB's 2010 Order. *Id.* at 65–66.

Under Agency precedent, where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must ' ''present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.'' ' '' *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988)). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie v. DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

However, while a registrant must accept responsibility and demonstrate that he will not engage in future misconduct in order to establish that his/her continued registration is consistent with the public interest, DEA has repeatedly held these are not the only factors that are relevant in determining the appropriate sanction. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30630, 30644 (2008); *see also Paul Weir Battershell,* 76 FR 44359, 44369 (2010) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009).

Moreover, as I have noted in several cases, '''[n]either *Jackson,* nor any other agency decision, holds . . . that the Agency cannot consider the deterrent value of a sanction in deciding whether a registration should be [suspended or] revoked.''' *Gaudio,* 74 FR at 10094 (quoting *Southwood,* 72 FR at 36504 (2007)); *see also Robert Raymond Reppy,* 76 FR 61154, 61158 (2011); *Michael S. Moore,* 76 FR 45867, 45868 (2011). This is so, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoptions of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

Thus, in *Gaudio,* ''I explained that 'even when a proceeding serves a remedial purpose, an administrative agency can properly consider the need to deter others from engaging in similar acts.' '' 74 FR at 10094 (quoting *Southwood,* 72 FR at 36504) (citing *Butz v. Glover Livestock Commission Co., Inc.,* 411 U.S. 182, 187–88 (1973)); *cf. McCarthy,* 406 F.3d at 189 (''Although general deterrence is not, by itself, sufficient justification for expulsion or suspension, we recognize that it may be considered as part of the overall remedial inquiry.''); *Paz Securities, Inc., et al.* v. *SEC,* 494 F.3d 1059, 1066 (D.C. Cir. 2007) (agreeing with *McCarthy*). In *Gaudio,* I further noted that the ''[c]onsideration of the deterrent effect of a potential sanction is supported by the CSA's purpose of protecting the public interest, *see* 21 U.S.C. § 801, and the broad grant of authority conveyed in the statutory text, which authorizes the [suspension or] revocation of a registration when a registrant 'has committed such acts as would render [his] registration . . . inconsistent with the public interest,' *id.* § 824(a)(4), and [which] specifically directs the Attorney General to consider ['such other conduct which may threaten public health and safety,' *id.* § 823(f)].'' 74 FR at 10094 (quoting *Southwood,* 72 FR at 36504).[47]

While noting that ''[a]gency precedent has recognized the significance of a registrant's remedial actions in continuing a registration,'' R.D at 63, the ALJ entirely ignored the *Southwood/Gaudio* line of authority. *See id.* at 63–65. However, as these cases make clear, even where a registrant accepts responsibility and demonstrates that he has undertaken remedial measures, in determining the appropriate sanction, the Agency can still consider the need to deter both the particular registrant, as well as others, from engaging in similar acts.

For example, in *Gaudio,* a case in which a physician was found to have recklessly dispensed controlled substances over the internet, I noted that ''even were I to ignore that Respondent has not accepted responsibility for his misconduct, and credit his testimony that he does not intend to resume his internet practice, I would still conclude that a lengthy suspension of his registration is warranted.'' 74 FR at 10095.[48] I rejected the ALJ's recommendation that I continue the physician's registration, subject only to the condition that he not prescribe controlled substances over the internet, *id.* at 10094, and instead suspended the physician's registration for a period of one year, holding that ''the ALJ's recommendation would not only 'ignore how irresponsibly [the physician] acted'; it would also signal to others that one can ignore the law . . . and yet incur no consequence for having done

[47] Unlike factors two (''[t]he applicant's experience in dispensing'') and three (''[t]he applicant's conviction record''), neither factor four (''Compliance with applicable laws related to controlled substances'') nor factor five (''Such other conduct which may threaten public health and safety'') contain the limiting words of ''[t]he applicant.'' As the Supreme Court has held, ''[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Russello* v. *United States,* 464 U.S. 16, 23 (1983). Thus, the text of factors four and five suggest that these factors are not limited to assessing the applicant's compliance with applicable laws and whether he has engaged in ''such other conduct,'' but rather authorize the Agency to also consider the effect of a sanction on inducing compliance with federal law by other practitioners.

[48] I further required that as a condition of approving the physician's application to renew his registration following the completion of his suspension, the physician was required to provide a sworn statement acknowledging his wrongdoing, and that without such an acknowledgement, his application would be denied. *See* 74 FR at 10095.

so.'' *Id.* at 10095 (quoting *Southwood,* 71 FR at 36503). I also noted that ''this is not the message that should be sent to those who contemplate prescribing controlled substances in'' the same unlawful manner as had the physician. *Id.*

In *Moore,* the ALJ found that a physician had unlawfully possessed and manufactured four pounds of marijuana. 76 FR at 45867. While finding that the physician had ''demonstrate[d] an acknowledgement that his actions were illegal,'' *id.* at 45877, and had ''credibly testified that he was in compliance with the terms of his [court-imposed] probation, as well as the terms of the [o]rder of'' his state medical board, *id.* at 45876, the ALJ recommended that his registration be suspended, noting that ''the agency has an interest in both assuring that the Respondent can be entrusted with the responsibilities attendant upon a [DEA] registrant and (notwithstanding the non-punitive nature of these proceedings) . . . in deterring others from similar acts.'' *Id.* at 45877.

On review, I ''agree[d] with the ALJ that the Agency's interest in deterring similar misconduct on the part of others warrant[ed] a substantial period of outright suspension.'' *Id.* at 45868. However, I increased the length of the suspension from the ALJ's recommendation of six months to one year, noting, in part, that ''a six-month suspension [did not] sufficiently protect[ ] the Agency's interest in deterring misconduct on the part of others.'' *Id.*

It is acknowledged that Respondent largely expressed his acceptance of the AMB's concerns with various aspects of his prescribing practices.[49] Moreover, Respondent put on evidence of various improvements he had made in his prescribing practices.[50] The ALJ also noted the testimony of Dr. Schneider, to the effect that Respondent was ''doing much more careful documentation'' and ''was ordering older records and he . . . definitely changed the way he did things.'' R.D. at 64 (citing Tr. 626); *see also id.* at 64–65 (citing affidavits of two physicians regarding improvements in charting and investigation of patient backgrounds).

Yet Respondent's evidence as to his reform efforts is undercut to a significant degree by the Board's finding that, even after he had been placed on probation based on his prescribing to DK, he continued to prescribe high doses of opioids to ML without obtaining objective measures of ML's pain (and indeed, did so notwithstanding that ML's x-ray contradicted his diagnosis of spondylolisthesis).[51] GX 18, at 16. Thus, I give Respondent's evidence as to his remedial efforts substantially less weight than the ALJ did.[52]

Nor does the ALJ's recommended sanction reflect an appreciation for the egregiousness of the violations he found proved (and which I concur with). In short, proof that in issuing a prescription, a practitioner acted outside of the usual course of professional practice and lacked a legitimate medical purpose, establishes that the practitioner has engaged in an act of intentional or knowing diversion. Such conduct strikes at the CSA's core purpose of preventing the abuse and diversion of controlled substances. *See Jack A. Danton,* 76 FR 60900, 60903 (2011); *George Mathew,* 75 FR 66138 (2010). Indeed, this Agency has revoked a practitioner's registration upon proof of as few as two acts of intentional diversion and has further explained that proof of a single act of intentional diversion is sufficient to support the revocation of a registration. *See MacKay,* 75 FR at 49977 (citing *Krishna-Iyer,* 74 FR at 463 (citing *Alan H. Olefsky,* 57 FR 928, 928–29 (1992))). While Respondent's misconduct would be egregious if it had been confined to a single patient, it was not. Rather, the Board's findings establish that Respondent diverted controlled substances to at least ten patients, and that with respect to several of these patients, he did so over an extensive time period.

[49] In support of its contention that Respondent does not accept responsibility for his misconduct, the Government contends that Respondent lacked candor in his testimony when he ''attempted to explain away the inconsistencies between [the UCs'] medical records and the recordings/transcripts of these visits by concocting a patently disingenuous story about how he conducted . . . physical examinations through silent observation and covert methods of discerning pulse, respiration, grip strength etc.'' Exceptions at 6 (citing *John Stanford Noell,* 59 FR 47359, 47362 (1994)). As found above, when confronted with the evidence that he had documented in each UC's medical record having taken their pulse while the transcript contains no indication that he had done so (at least in the typical way, *see* Tr.696), Respondent testified that he had determined the UC's pulses by shaking their hands. *Id.* at 987.

Notably, the Government does not contend that Respondent's falsification of the UCs' medical records is itself actionable misconduct which should be considered under factor five, and even if it had, falsification of a medical record (and whether there is a materiality requirement) is a question of state law. As for the Government's contention that Respondent's testimony shows that he does not accept responsibility for his misconduct in prescribing to the UCs, Respondent is not required to accept responsibility for misconduct which has not been proved on the record. Accordingly, while I conclude that Respondent's testimony as to how he took the UCs' pulses is ludicrous, I do not rely on it in setting the appropriate sanction.

[50] Respondent testified that he had read four or five textbooks, taken on-line courses, and talked with other practitioners to make improvements to his charting and that his records are now more detailed and ''transparent to outside individuals.'' Tr. 861. In addition, Respondent testified that he does not ''take patients without records if they're possible to obtain,'' and that ''[i]f a patient comes and there are no records, particularly of high dose opiates, we might give them small doses and establish a record with them ourselves.'' *Id.* at 852–53. Also, Respondent testified that he is now using the Arizona prescription monitoring program to determine whether his patients are getting controlled substances from another provider. *Id.* at 853. Finally, Respondent testified that his practice now has ''in-office urine testing'' and he does ''routine urine screenings . . . on a random basis,'' that he has given an even ''higher priority'' to pharmacy calls,'' and that ''we will often call physicians . . . that we have records on to verify if we have any questions about dosing from another physician.'' *Id.* at 872–73.

[51] The AMB's 2010 Order also identified several other patients, to whom Respondent continued to prescribe controlled substances in deviation of the standard of care, by failing to obtain prior records, obtain objective measures for the cause of pain, and address abnormal urine drug screens, and did so even after he had been placed on probation. *See* GX 18, at 11–13 (WO); *id.* at 14–15 (JR); *id.* at 15–16 (LP).

[52] In discussing Respondent's ''improvements in his prescribing practices . . . since the Board's actions,'' R.D. 60, the ALJ also cited the testimony of two patients, WR and ML (neither of whom is a medical professional), explaining that they ''credibly testified to their positive experiences in being treated by Respondent.'' R.D. at 61; *see also id.* at 62 (discussing testimony of Dr. SF that Respondent's care and treatment were ''excellent''). The term ''positive experience'' is not in the CSA, and the ALJ's conclusory discussion of WR's and ML's testimony offers little insight into what he understood the term to mean. Notably, neither patient offered testimony identifying specific changes in Respondent's prescribing practices which occurred following either of the AMB's orders. Thus, the testimony of WR and ML is not probative of the issue of whether Respondent has improved his prescribing practices.

As for Dr. SF's testimony that Respondent provided him with ''excellent'' treatment, while this Agency (as do the Federal courts) necessarily look to medical practice standards in assessing whether a physician who has prescribed controlled substances had a legitimate medical purpose and acted within the usual course of professional practice in doing so, DEA is charged with preventing the diversion of controlled substances and not with evaluating the adequacy of a physician's medical treatment. Moreover, as I have previously noted, ''[b]ecause under [the CSA], registration is limited to those who have authority to dispense controlled substances in the course of professional practice, and patients with legitimate medical conditions routinely seek treatment from licensed medical professionals, every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of [his] professional career.'' *See Krishna-Iyer,* 74 FR at 463.

It is acknowledged that Dr. SF testified that Respondent took a complete history, performed a physical examination, reviewed his rules for prescribing medication, as well as subsequently helped SF taper off of his medication. Tr. 782. Yet, Dr. SF did not see Respondent until six to nine months after the AMB issued the first order, Tr. 780, and was clearly a legitimate patient. While his testimony bolsters to a degree the other evidence as to Respondent's change in his prescribing practices, it is of minimal probative value in assessing Respondent management of drug seeking patients.

Nor—not surprisingly given that the ALJ totally ignored the Agency case law—does the recommended sanction reflect an appreciation for the growing and serious problem of the diversion of prescription drugs by unscrupulous practitioners and the epidemic of prescription drug abuse.[53] Indeed, adopting the ALJ's recommendation—which simply requires Respondent to do what the State has already required him to do—would create a perverse incentive. In short, it would send the message that a practitioner can unlawfully distribute controlled substances until he/she gets caught, and as long as he/she then acknowledges wrongdoing and puts on evidence that he/she has reformed, he/she will get a slap on the wrist. This is the entirely wrong message to send to those practitioners who contemplate using their prescribing authority for illicit purposes. And even those practitioners who might fairly be described as gullible or naïve, should know that there are serious consequences if they prescribe controlled substances in a manner that does not comply with the accepted standards of professional practice.[54]

I therefore reject the ALJ's recommended sanction that Respondent's registration be continued subject only to the condition that he comply with the AMB's order (and notify the Agency of any changes to the order). Instead, while I will order that Respondent's renewal application be granted, I will further order that his registration then be suspended for a period of one year.

Moreover, as Respondent suggested in his post-hearing brief, the Agency ''may wish to impose requirements of continued monitoring of his files and perhaps keeping a separate log for all medications.'' Resp. Prop. Findings of Fact, Conclusions of Law and Argument, at 43. Accordingly, upon Respondent's completion of his suspension, the following conditions shall be imposed on his registration.

1. Respondent shall keep a log of all controlled substance prescriptions he issues. Said log shall be maintained in chronological order, and shall list each patient by name, and include the name of the drug prescribed, the number of refills authorized, the strength of the dosage unit, the quantity, and the dosing instruction. Not later than ten days following the end of each month, Respondent shall provide the local DEA field office with a complete copy of the log for the preceding month.

2. Respondent shall agree to continued monitoring of his patient files, with the costs of said monitoring to be borne by him. Said monitor shall be board certified in pain management and licensed by the Arizona Medical Board. DEA retains final authority to accept or reject the selection of said monitor. Said monitor shall review no less than twenty patient files each quarter, which shall be selected by the monitor; the monitor's selection of any patient file may not be challenged by Respondent. Respondent shall agree to fully cooperate with the monitor.

3. Respondent shall further consent to unannounced inspections of his registered location and to waive his right to require DEA personnel to obtain an administrative inspection warrant prior to conducting an inspection.

4. These conditions shall remain in effect for a period of two years following the completion of Respondent's suspension. Said condition shall

[53] *See Krishna-Iyer,* 74 FR at 463 (quoting National Center on Addiction and Substance Abuse, *Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S.* 3 (2005) [hereinafter, *Under the Counter*]). As noted in *Krishna-Iyer,* ''[t]he diversion of controlled substances has become an increasingly grave threat to this nation's public health and safety. According to The National Center on Addiction and Substance Abuse (CASA), '[t]he number of people who admit abusing controlled prescription drugs increased from 7.8 million in 1992 to 15.1 million in 2003.' '' 74 FR at 463 (quoting *Under the Counter,* at 3). CASA also found that '' '[a]pproximately six percent of the U.S. population (15.1 million people) admitted abusing controlled prescription drugs in 2003, 23 percent more than the combined number abusing cocaine (5.9 million), hallucinogens (4.0 million), inhalants (2.1 million) and heroin (328,000).' '' *Id.* (quoting *Under the Counter,* at 3). Finally, CASA found that '''[b]etween 1992 and 2003, there has been a . . . 140.5 percent increase in the self-reported abuse of prescription opioids,'' and in the same period, the ''abuse of controlled prescription drugs has been growing at a rate twice that of marijuana abuse, five times greater than cocaine abuse and 60 times greater than heroin abuse.'' *Id.* (quoting *Under the Counter,* at 4).

[54] As support for his recommendation, the ALJ also quoted from a letter of Dr. Schneider, in which she wrote:

The goal of regulatory agencies needs to be (and is usually claimed to be) to improve the performance of physicians when a deficiency is noted, rather than prevent them from continuing to practice, thereby wasting their training and experience. [Respondent], like many pain management doctors, developed his knowledge of pain management on the job rather than through a formal training program. This is a rapidly evolving field, and its standards are evolving. [Respondent]'s skills continue to improve. I believe that at this point he is clearly able to practice pain management with sufficient skill and safety that he should be allowed to continue to do this.

RX 23, at 2–3.

Whatever the State of Arizona has chosen, in the exercise of its sovereignty, as the goal of its Medical Board, Congress has directed this Agency to protect the public interest. *See* 21 U.S.C. §§ 823(f) and 824(a)(4). This charge necessarily contemplates not only deterring a diverter from continuing to do so, but also deterring other would be diverters from doing so. And notwithstanding Dr. Schneider's view of the appropriate goal of a state medical board, here, the AMB concluded that Respondent's prescribing of opioids was so deficient that it suspended his prescribing authority for one year.

Indeed, while in this same paragraph, Dr. Schneider characterized Respondent's prescribing practices as ''minor deficiencies,'' RX 23, at 3, the Board's findings establish that, in numerous instances, Respondent violated the standard of care by: (1) Failing to perform physical examinations; (2) failing to perform adequate psychiatric evaluations; (3) not obtaining prior records; (4) failing to perform tests to confirm diagnoses and the need for controlled substances; (5) failing to conduct urine drug screens and monitor his patients' compliance; (6) ignoring the results of drug tests which either showed that his patient was not taking drugs he prescribed or taking drugs he did not prescribe or street drugs; (7) providing early refills; (8) adding drugs to a patient's medication regime and escalating the dosing of drugs without any rationale for doing so; and (9) prescribing large doses of opioids to a patient, who purportedly could not remember the name of her previous prescriber and who repeatedly failed to comply with instructions to bring in records from prior treating physicians. These findings were in addition to the Board's findings that Respondent failed to maintain adequate records.

If these are ''minor deficiencies,'' I would like to know what, in Dr. Schneider's view, would constitute a major one. As for Dr. Schneider's suggestion that Respondent's misconduct should be excused because he ''developed his knowledge of pain management on the job rather than through a formal training program,'' on various occasions (November 1997, May 1999, and June 2003), the AMB published guidelines on the Use of Controlled Substances for the Treatment of Chronic Pain, which specifically addressed many of the problematic practices the Board identified in its review of Respondent's prescribing practices, and which ''clarif[ied] the principles of professional practice that are endorsed by the Board.'' Arizona Medical Board, *Use of Controlled Substances for the Treatment of Chronic Pain* (Substantive Policy Statement # 7).

Likewise, well before Respondent issued the prescriptions which were discussed in the AMB's orders, federal courts had issued decisions upholding convictions for violating the prescription requirement based on conduct similar to Respondent's. *See, e.g., Moore,* 423 U.S. at 142–43; *United States v. Williams,* 445 F.3d 1302, 1305 (11th Cir. 2006) (sustaining conviction for unlawful distribution noting, *inter alia,* expert's testimony that physician ''wrote prescriptions for patients on whom he performed no or very minimal physical examination,'' ''wrote prescriptions for patients whose toxicology screens . . . showed that they were not taking the prescribed drugs and were instead taking illegal drugs,'' and ''he frequently refilled prescriptions early and replaced 'lost' drugs''); *United States v. Tran Trong Cuong,* 18 F.3d 1132, 1139 (4th Cir. 1994) (sustaining conviction for unlawful distribution noting, *inter alia,* that ''[m]ost of the patients were given very superficial physical examinations and even after months of the same complaints of pain and the same prescriptions of drugs, they were not given more complete examinations, nor were they subjected to x-rays or blood analysis or referred to specialists in an effort to identify and correct the cause of the pain'').

Certainly, those who undertake to practice in a highly regulated profession cannot reasonably claim ignorance of the laws, regulations and standards applicable to the practice of their profession. *Cf. United States* v. *Southern Union Co.,* 630 F.3d 17, 31 (1st Cir. 2010). Finally, given that Respondent testified that he read four or five textbooks to improve his understanding of applicable standards, one must wonder why he did not read these textbooks when he decided to commence treating patients for chronic pain.

thereupon terminate upon Respondent's completion of the two year period without violating any of the above terms. The violation of any of the above terms shall, however, subject, Respondent's registration to an Order of Immediate Suspension.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that the application of David A. Ruben, M.D., to renew his Certificate of Registration as a practitioner, be, and it hereby is, granted subject to the conditions set forth above. I further order that Respondent's Certificate of Registration be, and it hereby is, suspended for a period of one year to begin thirty days from the date of publication of this Order in the **Federal Register**. This Order is effectively immediately.

Dated: June 18, 2013.

Michele M. Leonhart,

Administrator.

[FR Doc. 2013–15266 Filed 6–25–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc. (Formerly SGS U.S. Testing Company, Inc.)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of SGS North America, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory by the addition of one test site and the removal of one test site. This notice presents the Agency's preliminary finding to grant this request. This notice also announces a voluntary modification of the NRTL scope of recognition of SGS North America, Inc., and formally reflects the name change from SGS U.S. Testing Company, Inc. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 11, 2013.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit a copy of comments and any attachments to the OSHA Docket Office, Docket No. OSHA–2007–0039, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TDY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2006–0040). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be available online at *http://www.regulations.gov.*

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before July 11, 2013 to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: David W. Johnson, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or phone (202) 693–1973.

SUPPLEMENTARY INFORMATION:

I. Notice of Expansion Application

The Occupational Safety and Health Administration (OSHA) is providing notice that SGS North America, Inc. (SGS) is applying for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). SGS's expansion request covers the addition of one additional test site. SGS's also requests the removal of one test site from its NRTL scope of recognition. SGS informed OSHA of a change in name from SGS U.S. Testing Company, Inc. to SGS North America, Inc. (see Exhibit 1: SGS Application). This notice reflects that change. OSHA's current scope of recognition for SGS is available at *http://www.osha.gov/dts/otpca/nrtl/sgs.html.*

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth modifications of the NRTL's scope of recognition. OSHA maintains an informational Web page for each NRTL that details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

Each NRTL's scope of recognition has three elements. The first element is the type of products the NRTL may test, with each type specified by its applicable test standard. The second element identifies the recognized site(s)

that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope of recognition. The third element an NRTL's scope of recognition identifies is the supplemental program(s) that the NRTL may use. These supplemental programs allow the NRTL to rely on other parties to perform activities necessary for product testing and certification.

SGS currently has one site that OSHA recognizes, its headquarters, located at: SGS North America, Inc., 291 Fairfield Avenue, Fairfield, New Jersey 07004. SGS requests OSHA to change the location of their headquarters from the above-mentioned address. SGS's headquarters will now be located at: SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia 30024. A complete list of SGS sites recognized by OSHA is available at *http://www.osha.gov/dts/otpca/nrtl/sgs.html.*

II. General Background on the Application

SGS submitted an application, dated April 19, 2012 (Exhibit 1: SGS Application), requesting several changes to its NRTL scope of recognition. SGS requests to expand its recognition to include one additional test site located at 620 Old Peachtree Road, Suwanee, Georgia 30024. Additionally, this application requests the change of the address for SGS's headquarters from 291 Fairfield Avenue, Fairfield, New Jersey 07004 to 620 Old Peachtree Road, Suwanee, Georgia 30024. As a consequence of this move, SGS requests the removal of one test site, located at 291 Fairfield Avenue, Fairfield, New Jersey 07004, from its NRTL scope of recognition. SGS also informs OSHA of the change of its name from SGS U.S. Testing Company, Inc., to SGS North America, Inc.

SGS also requests a modification of its scope of recognition under the NRTL Program. This request reduces the number of test standards in SGS's current NRTL scope of recognition by 13 test standards. Subsection II.D of Appendix A to 29 CFR 1910.7 provides that OSHA must inform the public of such a reduction in scope. Accordingly, effective the date of this notice, OSHA is modifying SGS's scope of recognition to eliminate the 13 test standards listed below:

1. ANSI/UL 1—Flexible Metal Conduit
2. UL 62—Flexible Cords and Cables
3. UL 355—Cord Reels
4. UL 498—Attachment Plugs and Receptacles
5. UL 498A—Current Taps and Adapters
6. ANSI/UL 514A—Metallic Outlet Boxes, Electrical
7. UL 544—Electric Medical and Dental Equipment
8. ANSI/UL 632—Electrically Actuated Transmitters
9. UL 817—Cord Sets and Power-Supply Cords
10. UL 1363—Relocatable Power Taps
11. ANSI/UL 1484—Residential Gas Detectors
12. UL 1492—Audio-Video Products and Accessories
13. UL 1581—Electrical Wires, Cables, and Flexible Cords

In connection with these requests, NRTL Program staff performed an on-site review of SGS's Suwanee, Georgia, testing facilities on November 13, 2012. OSHA staff found some non-conformances within the laboratory during the audit. Following the correction of these non-conformances, OSHA staff recommends expansion of SGS's recognition to include the addition of the Suwanee, Georgia, site. As a result, OSHA preliminarily determined that it should expand SGS's scope of recognition to include one additional test site.

III. Preliminary Finding on the Application

SGS submitted an acceptable application for expansion of its recognition as an NRTL. OSHA's review of the application file, and the results of the on-site review, indicate that SGS can meet the requirements prescribed by 29 CFR 1910.7 for recognition to use the facilities listed above. This preliminary finding does not constitute an interim or temporary approval of the application. SGS corrected the discrepancies noted by OSHA during the on-site review, and the on-site review report describes these corrections (Exhibit 2: SGS On-site Review Report).

OSHA welcomes public comment as to whether SGS meets the requirements of 29 CFR 1910.7 for expansion of their recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in SGS's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0040.

The NRTL Program staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend whether to grant SGS's application for expansion. The Assistant Secretary will make the final decision on granting the application and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on June 20, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–15229 Filed 6–25–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0012]

Proposed Modification to the Scopes of Recognition of Several NRTLs

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA proposes to delete several test standards from the scopes of recognition of several nationally recognized testing laboratories (NRTLs), and to incorporate into the scopes of recognition of several NRTLs test standards to replace some of the deleted test standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 26, 2013. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES:

Electronically: Tender submissions electronically to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions online for making electronic submissions.

Facsimile: If submissions, including attachments, are not longer than ten (10) pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

Regular or Express Mail, Hand Delivery, or Messenger (Courier) Service: Tender submissions to the OSHA Docket Office, Docket No. OSHA–2013–0012, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving submissions sent by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by regular or express mail, hand delivery, or messenger (courier) service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2013–0012). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials may be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or to the OSHA Docket Office at the address above. The *http://www.regulations.gov* index lists all documents in the docket; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All documents in the docket, including copyrighted material, are available for inspection at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press Inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and Technical Information: Contact Mr. David Johnson, NRTL Program, Occupational Safety and Health Administration, Room N–3655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2110. OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov* and select ''N'' in the ''A to Z Index'' located at the top of the Web page).

Copies of this ***Federal Register*** *Notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as other relevant information, is also available on OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NRTL Program recognizes organizations that provide product-safety testing and certification services to manufacturers. These organizations perform testing and certification, for purposes of the Program, to U.S. consensus-based product-safety test standards. OSHA does not develop or issue these test standards, but generally relies on U.S. standards-development organizations (SDOs) accredited by the American National Standards Institute (ANSI). The products covered by the Program consist of those items for which OSHA safety standards require ''certification'' by an NRTL. The requirements affect electrical products and 38 other types of products.

OSHA recognition of an organization as an NRTL signifies that the organization meets the legal requirements in the NRTL Program regulations at 29 CFR 1910.7 and the NRTL Program policies in CPL 1–0.3 NRTL Program Policies, Procedures, and Guidelines (''Directive''). Recognition is an acknowledgement by OSHA that the NRTL can perform independent safety testing and certification of the specific products covered within the NRTL's scope of recognition. Recognition of an NRTL by OSHA also allows employers to use products certified by that NRTL to meet those OSHA standards that require product testing and certification (29 CFR 1910.7(a)).

An NRTL's scope of recognition consists, in part, of the specific test standard(s) approved by OSHA for use by the NRTL. Pursuant to the NRTL Program regulations, the NRTL must first request to have a test standard included in its scope of recognition. OSHA will grant the NRTL's request only if the NRTL has the capability to test and examine equipment [1] and materials for workplace safety purposes and to determine conformance with the test standard for each relevant item of equipment or material that it lists, labels, or accepts (29 CFR 1910.7(b)(1)). Capability includes proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality-control programs. An organization's recognition as an NRTL is, therefore, not for products, but for ''appropriate'' test standards covering a type of product(s) (29 CFR 1910.7(b)(1)).

Pursuant to the NRTL Program regulations, to be ''appropriate,'' a test standard must be current, and it must specify the safety requirements for a specific type of product(s) (29 CFR 1910.7(c)). OSHA policy provides that a document specifies safety requirements for a specific type product(s) if the document includes ''features, parts, capabilities, usage limitations, or installation requirements which if they did not exist would create a potential hazard in using the equipment'' (Directive, App. D.IV.B). However, OSHA policy also provides that the document not ''focus primarily on usage, installation, or maintenance requirements'' (Directive, App. D.IV.B). Finally, as OSHA requires the testing and certification of certain products only (29 CFR 1910.7(a)), an NRTL's scope of recognition should not include test standards that do not specify safety requirements for products for which OSHA does not require testing and certification (Directive, App. D.IV.A).

II. Modifying Test Standards in NRTLs' Scopes of Recognition

A. Proposed Deletion of Withdrawn Test Standards From, and Incorporation of Replacement Test Standards Into, the Scopes of Recognition of Several NRTLs

In this notice, OSHA proposes to delete several withdrawn test standards from the scopes of recognition of several NRTLs. OSHA also proposes to incorporate into the scopes of recognition of several NRTLs test standards to replace some of the withdrawn (and deleted) test standards.

The NRTL Program regulations require that appropriate test standards be current (29 CFR 1910.7(c)). A test standard withdrawn by a standards organization is no longer considered an appropriate test standard (Directive, App. C.XIV.B). It is OSHA's policy to remove recognition of withdrawn test standards by issuing a correction notice

[1] In this notice, OSHA uses the terms ''equipment'' and ''product'' or ''products'' interchangeably.

in the **Federal Register** for all NRTLs recognized for the withdrawn test standards. However, OSHA will recognize an NRTL for an appropriate replacement test standard if the NRTL has the requisite testing and evaluation capability for the replacement test standard.

One method that NRTLs may use to show such capability involves an analysis to determine whether any testing and evaluation requirements of existing test standards in an NRTL's scope are comparable (*i.e.,* are completely or substantially identical) to the requirements in the replacement test standard. If OSHA's analysis shows the replacement test standard does not require additional or different technical capability than an existing test standard(s), the replacement test standard is comparable to the existing test standard(s), and OSHA can add the replacement test standard to affected NRTLs' scopes of recognition. In making this determination, OSHA also considers the documents or medium that the NRTL uses to record test and evaluation data or results, which OSHA commonly calls ''test datasheets,'' to be part of the NRTL's written testing procedures.[2]

If OSHA's analysis shows the replacement test standard requires an additional or different technical capability, the replacement test standard is not comparable to any existing test standards. Furthermore, if a replacement test standard requires the NRTL to modify its datasheets substantively, or to develop new datasheets, then the test standards are also not comparable. In such cases (*i.e.,* when the test standards are not comparable), each affected NRTL that seeks to have OSHA add the replacement test standard to the NRTL's scope of recognition must provide information to OSHA that demonstrates technical capability.

B. Proposed Deletion of Inappropriate Test Standards From the Scopes of Recognition of Several NRTLs

OSHA proposes to delete several test standards from the scopes of recognition of several NRTLs based on a recent internal review in which NRTL Program staff determined that several test standards currently in the NRTLs' scopes of recognition did not conform to the definition of appropriate test standard defined in NRTL Program regulations and policy. First, one of the documents at issue, UL 1666, provides the methodology for one test only, and is, therefore, a test method rather than an appropriate test standard (29 CFR 1910.7(c)). As stated above, a test standard must specify the safety requirements for a specific type of product(s). *Id.* A test method, however, is a ''specified technical procedure for performing a test'' (Directive, App. B). As such, a test method is not an appropriate test standard: While an NRTL may use a test method to determine if certain safety requirements are met, a test method is not itself a safety requirement for a specific product.

Second, several of the documents focus primarily on usage, installation, or maintenance requirements. As stated above, such documents are not appropriate test standards (Directive, App. D.IV.B).

Third, some of the documents are not appropriate test standards because the documents cover products for which OSHA does not require testing and certification (Directive, App. D.IV.A). OSHA initially recognized these documents for use in the NRTL Program under OSHA standards such as 29 CFR 1910.68. These OSHA standards do not require testing and certification for the product(s) covered by the documents OSHA proposes to delete.

Finally, several of the documents cover electrical-product components, such as transformers, resistors, and capacitors used in television-type appliances. These documents apply to types of components that have limitation(s) or condition(s) on their use, in that they are not appropriate for use as end-use products. These documents also specify that these types of components are for use only as part of an end-use product. NRTLs, however, evaluate such components only in the context of evaluating whether end-use products requiring NRTL approval are safe for use in the workplace. Testing such components alone would not indicate that the end-use products containing the components are safe for use. Accordingly, as a matter of policy, OSHA considers that documents covering such components are not appropriate test standards under the NRTL Program. OSHA notes, however, that it is not proposing to delete from NRTLs' scopes of recognition any test standards covering end-use products that contain such components.[3]

In addition, OSHA notes that, to conform to a test standard covering an end-use product, an NRTL must still determine that the components in the product comply with these components' specific test standards, some of which OSHA is proposing to delete in this notice. In making this determination, NRTLs may test the components themselves, or accept the testing of a qualified testing organization that a given component conforms to its particular test standard. OSHA reviews each NRTL's procedures to determine which approach the NRTL will use to address components, and reviews the end-use product testing to verify the NRTL appropriately addresses that product's components.

OSHA added the documents now subject to deletion to affected NRTLs' scopes of recognition before OSHA issued the NRTL Program Directive. The Directive clarified the meaning of ''appropriate test standard.'' After issuing the Directive, OSHA deleted some documents from NRTLs' scopes of recognition because those documents were not appropriate test standards (see 70 FR 11273, March 8, 2005). After further review of the entire list of test standards recognized under the NRTL Program, OSHA determined that it should delete additional documents from NRTLs' scopes of recognition. In all cases, these deletions would be programmatic corrections only, and do not reflect OSHA's view of the technical merits of the documents. In addition, deleting these documents from the NRTLs' scopes of recognition would not prevent testing organizations (including NRTLs) from using the deleted documents for their testing activities.

III. Test Standards OSHA Proposes To Delete and Incorporate

Table 1 lists the test standards that OSHA proposes to delete from affected NRTLs' scopes of recognition, as well as an abbreviated rationale for OSHA's proposed actions. For a full discussion of the rationale, see, above, Sections II.A and II.B of this notice. Table 1 also lists corresponding replacement test standards that OSHA proposes to incorporate into the NRTLs' scopes of recognition (when applicable).

In most cases, OSHA already incorporated the proposed replacement test standards into affected NRTLs' scopes of recognition. OSHA proposes

[2] Such datasheets may be electronic records or hardcopies, and must ensure that the NRTL will capture all necessary test and evaluation data or results completely and accurately. Additionally, datasheets may be separate or combined in other documents or records.

[3] OSHA notes also that some types of devices covered by these documents, such as capacitors and transformers, may be end-use products themselves, and tested under other test standards applicable to such products. For example, the following test standard covers transformers that are end-use products: UL 1562 Standard for Transformers, Distribution, Dry-Type—Over 600 Volts. OSHA is not proposing to delete such test standards from NRTLs' scopes of recognition.

one of the following actions with respect to the remaining cases:

1. OSHA proposes to incorporate, for all affected NRTLs, comparable test standards that SDOs adopted to replace withdrawn (and deleted) test standards; or

2. OSHA proposes to incorporate, for all affected NRTLs, appropriate test standards that OSHA concludes are comparable to the withdrawn (and deleted) test standards.

OSHA notes that it is not proposing to delete UL 664 from the scopes of recognition of affected NRTLs, even though Underwriters Laboratories withdrew UL 664. OSHA currently is examining whether it can incorporate any test standard(s) into the scopes of recognition of affected NRTLs to replace UL 664. Once OSHA completes this examination, it will issue a new **Federal Register** notice addressing the deletion of UL 664 from the scopes of recognition of affected NRTLs.

OSHA also notes that it is not proposing to delete UL 1004 from the scopes of recognition of affected NRTLs even though Underwriters Laboratories withdrew UL 1004, and issued UL 1004–1 as a replacement. Unlike other replacements shown in this notice, OSHA believes that UL 1004–1 is not comparable to UL 1004. OSHA currently is working on a separate **Federal Register** notice that will propose how OSHA plans to incorporate such test standard(s), and a number of other test standards, into the scopes of recognition of affected NRTLs. OSHA plans to publish this notice in the near future.

OSHA notes also that Table 1 lists the subject test standards and the proposed action with regard to each of these test standards without indicating how the proposed action will affect individual NRTLs. Section IV of this notice discusses how the proposed action will affect individual NRTLs.

TABLE 1—LIST OF TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO NRTL SCOPES OF RECOGNITION

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
ANSI A90.1 Safety Standard for Belt Manlifts	29 CFR 1910.68 does not require testing and certification for covered product(s); also not an appropriate test standard because it covers primarily the manufacture, installation, maintenance, inspection, and operation of manlifts, not safety testing.	Not applicable (NA).
ASTM E2074 Standard Test Method for Fire Tests of Door Assemblies, Including Positive Pressure Testing of Side-Hinged and Pivoted Swinging Door Assemblies.	Withdrawn	No replacement.
ANSI/NFPA 11A Medium- and High-Expansion Foam Systems.	Withdrawn; moreover, OSHA standards do not require testing and certification for covered systems.	NA. Although replaced by ANSI/NFPA 11, ANSI/NFPA 11 is not an appropriate test standard (see 75 FR 77002, 77004–77005, Dec. 10, 2010, for discussion of why ANSI/NFPA 11 is not appropriate).
ANSI/NFPA 20 Installation of Stationary Fire Pumps for Fire Protection.	Not an appropriate test standard because it covers primarily the selection and installation of these pumps, not safety testing.	NA.
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 187 X Ray Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 1 below).
UL 207 Refrigerant-Containing Components and Accessories, Nonelectrical.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 343 Pumps for Oil-Burning Appliances	No requirement for NRTL approval of this type of pump.	NA.
UL 512 Fuseholders	Withdrawn	UL 4248–1 Fuseholders—Part 1: General Requirements. UL 4248–4 Fuseholders—Part 4: Class CC. UL 4248–5 Fuseholders—Part 5: Class G. UL 4248–6 Fuseholders—Part 6: Class H. UL 4248–8 Fuseholders—Part 8: Class J. UL 4248–9 Fuseholders—Part 9: Class K. UL 4248–11 Fuseholders—Part 11: Type C (Edison Base) and Type S Plug Fuse. UL 4248–12 Fuseholders—Part 12: Class R. UL 4248–15 Fuseholders—Part 15: Class T (for all replacement standards, see Note 1 below).
UL 544 Medical and Dental Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 1 below).
UL 632 Electrically-Actuated Transmitters	Withdrawn	No replacement.
UL 651B Continuous Length HDPE Conduit	Withdrawn	UL 651A Schedule 40 and 80 High Density Polyethylene (HDPE) Conduit (see Note 1 below).

TABLE 1—LIST OF TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO NRTL SCOPES OF RECOGNITION—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 1 below).
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 1 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 1 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 1 below).
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 1 below).
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 1 below).
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 1 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 1 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 1 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 1 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 1 below).
UL 746A Polymeric Materials Short Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746B Polymeric Materials Long Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746C Polymeric Materials—Use in Electrical Equipment Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed-Wiring Boards.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations.	Withdrawn	UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations (see Note 1 below).
UL 796 Printed-Wiring Boards	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 877 Circuit Breakers and Circuit Breaker Enclosures for Use in Hazardous (Classified) Locations (UL 1203).	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 1 below).

TABLE 1—LIST OF TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO NRTL SCOPES OF RECOGNITION—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 1 below).
UL 894 Switches for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 1 below).
UL 983 Surveillance Camera Units	Withdrawn	No replacement.
UL 1002 Electrically Operated Valves for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 1 below).
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 1 below).
UL 1010 Receptacle Plug Combinations for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 1 below).
UL 1075 Gas-Fired Cooking Appliances for Recreational Vehicles.	Withdrawn	No replacement.
UL 1097 Double Insulation Systems for Use in Electrical Equipment.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1413 High Voltage Components for Television Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1414 Across-the-Line, Antenna-Coupling, and Line- by-Pass Capacitors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1417 Special Fuses for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1433 Control Centers for Changing Message Type Electric Signs.	Withdrawn	No replacement.
UL 1445 Electric Water Bed Heaters	Withdrawn	No replacement.
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations.	Withdrawn	ANSI/ISA–12.12.01 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations (see Note 1 below).
UL 1664 Immersion Detection Circuit Interrupters.	Withdrawn	No replacement.
UL 1666 Test for Flame Propagation Height of Electrical and Optical Fiber Cables Installed Vertically in Shafts.	Test method; therefore, not an appropriate test standard.	NA.
UL 1684 Reinforced Thermosetting Resin Conduit (RTRC) and Fittings.	Withdrawn	UL 2420 Belowground Reinforced Thermosetting Resin Conduit (RTRC) and Fittings and UL 2515 Aboveground Reinforced Thermosetting Resin Conduit (RTRC) and Fittings (for both replacement standards, see Note 1 below).
UL 1686 Pin and Sleeve Configurations	Not an appropriate test standard; does not specify safety requirements for covered devices; provides the physical dimensions for covered devices only.	NA.
UL 1692 Polymeric Materials Coil Forms	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

TABLE 1—LIST OF TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO NRTL SCOPES OF RECOGNITION—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 1694 Tests for Flammability of Small Polymeric Component Materials).	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 2106 Field Erected Boiler Assemblies	No requirement for NRTL approval in OSHA requirements; test standard applies to boilers burning fuel.	NA.
UL 60691 Thermal Links Requirements and Application Guide.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

Note 1: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into affected NRTLs' scopes of recognition without requiring affected NRTLs to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1). OSHA notes that such proposed action is not necessary for those NRTLs with scopes of recognition that already include the proposed replacement test standard.

IV. Proposed Modifications to Affected NRTLs' Scopes of Recognition

The tables in this section (Table 2 thru Table 13) list, for each affected NRTL, the test standard(s) that OSHA proposes to delete from the scope of recognition of the NRTL and, when applicable, the test standard(s) that OSHA proposes to incorporate into the scope of recognition of that NRTL to replace withdrawn (and deleted) test standards. Notes to the tables make clear whether individual NRTLs must submit information to demonstrate their capability for each proposed replacement test standard.

OSHA seeks the following input on whether the actions OSHA proposes in the tables are appropriate:

1. OSHA seeks comment on whether its proposed deletions and incorporations are appropriate, and whether individual tables omit any appropriate replacement test standard that is comparable to a withdrawn test standard. If OSHA determines that it omitted any appropriate replacement test standard that is comparable to a withdrawn test standard, it will, in its final determination, incorporate that replacement test standard into the scope of recognition of each affected NRTL.

2. In addition, the test standards listed in the tables include only withdrawn or otherwise inappropriate standards of which OSHA became aware on or before May 1, 2013. OSHA seeks input on whether individual NRTLs' scopes of recognition contain any additional withdrawn or otherwise inappropriate test standards.

OSHA will incorporate into its informational Web pages the modifications OSHA decides to make to each NRTL's scope of recognition. These Web pages detail the scope of recognition for each NRTL, including the test standards the NRTL may use to test and certify products under OSHA's NRTL Program. OSHA also will add, to its ''Composite List of Standards Recognized under the NRTL Program'' Web page, those test standards it incorporates into affected NRTLs' scopes of recognition, and add, to its ''Composite List of Test Standards No Longer Recognized'' Web page, those test standards that OSHA no longer recognizes or permits under the NRTL Program. Access to these Web pages is available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA proposes the following revisions to the scopes of recognition of individual NRTLs:

TABLE 2—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF THE CANADIAN STANDARDS ASSOCIATION (CSA)

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 187 X Ray Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 207 Refrigerant-Containing Components and Accessories, Nonelectrical.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 343 Pumps for Oil-Burning Appliances	No requirement for NRTL approval of this type of pump.	NA.
UL 512 Fuseholders	Withdrawn	UL 4248–1 Fuseholders—Part 1: General Requirements. UL 4248–4 Fuseholders—Part 4: Class CC. UL 4248–5 Fuseholders—Part 5: Class G. UL 4248–6 Fuseholders—Part 6: Class H. UL 4248–8 Fuseholders—Part 8: Class J. UL 4248–9 Fuseholders—Part 9: Class K. UL 4248–11 Fuseholders—Part 11: Type C (Edison Base) and Type S Plug Fuse. UL 4248–12 Fuseholders—Part 12: Class R.

TABLE 2—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF THE CANADIAN STANDARDS ASSOCIATION (CSA)—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
		UL 4248–15 Fuseholders—Part 15: Class T (for all replacement standards, see Note 3 below).
UL 544 Medical and Dental Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 632 Electrically-Actuated Transmitters	Withdrawn	No replacement.
UL 651B Continuous Length HDPE Conduit	Withdrawn	UL 651A Schedule 40 and 80 High Density Polyethylene (HDPE) Conduit (see Note 2 below).
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 3 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 3 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 3 below).
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 3 below).
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 3 below).
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 3 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 3 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 3 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 3 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 3 below).
UL 746A Polymeric Materials Short Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746B Polymeric Materials Long Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746C Polymeric Materials—Use in Electrical Equipment Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed- Wiring Boards.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

TABLE 2—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF THE CANADIAN STANDARDS ASSOCIATION (CSA)—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations.	Withdrawn	UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 796 Printed-Wiring Boards	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 877 Circuit Breakers and Circuit Breaker Enclosures for Use in Hazardous (Classified) Locations (UL 1203).	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 894 Switches for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 983 Surveillance Camera Units	Withdrawn	No replacement.
UL 1002 Electrically Operated Valves for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 3 below).
UL 1010 Receptacle Plug Combinations for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 1097 Double Insulation Systems for Use in Electrical Equipment.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1413 High Voltage Components for Television Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1414 Across-the-Line, Antenna-Coupling, and Line- by-Pass Capacitors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1417 Special Fuses for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1433 Control Centers for Changing Message Type Electric Signs.	Withdrawn	No replacement.
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations.	Withdrawn	ANSI/ISA—12.12.01–2012 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations (see Note 3 below).
UL 1664 Immersion Detection Circuit Interrupters.	Withdrawn	No replacement.
UL 1666 Test for Flame Propagation Height of Electrical and Optical Fiber Cables Installed Vertically in Shafts.	Test method; therefore, not an appropriate test standard.	NA.
UL 1684 Reinforced Thermosetting Resin Conduit (RTRC) and Fittings.	Withdrawn	UL 2420 Belowground Reinforced Thermosetting Resin Conduit (RTRC) and Fittings and UL 2515 Aboveground Reinforced Thermosetting Resin Conduit (RTRC) and Fittings (for both replacement standards, see Note 3 below).

TABLE 2—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF THE CANADIAN STANDARDS ASSOCIATION (CSA)—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 60691 Thermal-Links Requirements and Application Guide.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

TABLE 3—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF CURTIS-STRAUS LLC

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 544 Medical and Dental Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

TABLE 4—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF FM APPROVALS LLC

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations.	Withdrawn	UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 877 Circuit Breakers and Circuit Breaker Enclosures for Use in Hazardous (Classified) Locations (UL 1203).	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 894 Switches for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 1002 Electrically Operated Valves for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

TABLE 5—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES NA, INC.

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
ANSI A90.1 Safety Standard for Belt Manlifts	29 CFR 1910.68 does not require testing and certification for covered product(s); also not an appropriate test standard because it covers primarily the manufacture, installation, maintenance, inspection, and operation of manlifts, not safety testing.	NA.
ASTM E2074 Standard Test Method for Fire Tests of Door Assemblies, Including Positive Pressure Testing of Side-Hinged and Pivoted Swinging Door Assemblies.	Withdrawn	No replacement.
ANSI/NFPA 11A Medium- and High-Expansion Foam Systems.	Withdrawn; moreover, OSHA standards do not require testing and certification for covered systems.	NA. Although replaced by ANSI/NFPA 11, ANSI/NFPA 11 is not an appropriate test standard (see 75 FR 77002, 77004–77005, Dec. 10, 2010, for discussion of why ANSI/NFPA 11 is not appropriate).
ANSI/NFPA 20 Installation of Stationary Fire Pumps for Fire Protection.	Not an appropriate test standard because it covers primarily the selection and installation of these pumps, not safety testing.	NA.
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 187 X Ray Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 207 Refrigerant-Containing Components and Accessories, Nonelectrical.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 343 Pumps for Oil-Burning Appliances	No requirement for NRTL approval of this type of pump.	NA.
UL 512 Fuseholders	Withdrawn	UL 4248–1 Fuseholders—Part 1: General Requirements. UL 4248–4 Fuseholders—Part 4: Class CC. UL 4248–5 Fuseholders—Part 5: Class G. UL 4248–6 Fuseholders—Part 6: Class H. UL 4248–8 Fuseholders—Part 8: Class J. UL 4248–9 Fuseholders—Part 9: Class K. UL 4248–11 Fuseholders—Part 11: Type C (Edison Base) and Type S Plug Fuse. UL 4248–12 Fuseholders—Part 12: Class R. UL 4248–15 Fuseholders—Part 15: Class T (for all replacement standards, see Note 3 below).
UL 544 Medical and Dental Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 632 Electrically-Actuated Transmitters	Withdrawn	No replacement.
UL 651B Continuous Length HDPE Conduit	Withdrawn	UL 651A Schedule 40 and 80 High Density Polyethylene (HDPE) Conduit (see Note 2 below).
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 3 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 3 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 3 below).
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 3 below).

TABLE 5—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES NA, INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 3 below).
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 3 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 3 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 3 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 3 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 3 below).
UL 746A Polymeric Materials Short Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746B Polymeric Materials Long Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746C Polymeric Materials—Use in Electrical Equipment Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed-Wiring Boards.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations.	Withdrawn	UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 796 Printed-Wiring Boards	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products..	NA.
UL 877 Circuit Breakers and Circuit Breaker Enclosures for Use in Hazardous (Classified) Locations (UL 1203).	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 894 Switches for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 983 Surveillance Camera Units	Withdrawn	No replacement.
UL 1002 Electrically Operated Valves for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 3 below).
UL 1010 Receptacle Plug Combinations for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).

TABLE 5—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES NA, INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 1075 Gas-Fired Cooking Appliances for Recreational Vehicles.	Withdrawn	No replacement.
UL 1097 Double Insulation Systems for Use in Electrical Equipment.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1413 High Voltage Components for Television Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1414 Across-the-Line, Antenna-Coupling, and Line- by-Pass Capacitors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1417 Special Fuses for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1433 Control Centers for Changing Message Type Electric Signs.	Withdrawn	No replacement.
UL 1445 Electric Water Bed Heaters	Withdrawn	No replacement.
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations.	Withdrawn	ANSI/ISA—12.12.01–2012 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations (see Note 2 below).
UL 1664 Immersion Detection Circuit Interrupters.	Withdrawn	No replacement.
UL 1666 Test for Flame Propagation Height of Electrical and Optical Fiber Cables Installed Vertically in Shafts.	Test method; therefore, not an appropriate test standard.	NA.
UL 1694 Tests for Flammability of Small Polymeric Component Materials.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 2106 Field Erected Boiler Assemblies	No requirement for NRTL approval in OSHA requirements; test standard applies to boilers burning fuel.	NA.
UL 60691 Thermal-Links-Requirements and Application Guide.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

TABLE 6—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF MET LABORATORIES, INC.

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 187 X Ray Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 544 Medical and Dental Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).

TABLE 6—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF MET LABORATORIES, INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 3 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 3 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 3 below).
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 3 below).
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 3 below).
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 3 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 3 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 3 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 3 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 3 below).
UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 983 Surveillance Camera Units	Withdrawn	No replacement.
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 3 below).
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1433 Control Centers for Changing Message Type Electric Signs.	Withdrawn	No replacement.
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations.	Withdrawn	ANSI/ISA—12.12.01–2012 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations (see Note 3 below).

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the

replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

TABLE 7—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF NSF INTERNATIONAL

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 651B Continuous Length HDPE Conduit	Withdrawn	UL 651A Schedule 40 and 80 High Density Polyethylene (HDPE) Conduit (see Note 2 below).

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

TABLE 8—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF SGS U.S. TESTING COMPANY, INC.

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 544 Medical and Dental Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 632 Electrically-Actuated Transmitters	Withdrawn	No replacement.
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations.	Withdrawn	ANSI/ISA—12.12.01–2012 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations (see Note 3 below).

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

TABLE 9—TEST STANDARD OSHA PROPOSES TO DELETE FROM THE SCOPE OF RECOGNITION OF SOUTHWEST RESEARCH INSTITUTE

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
ASTM E2074 Standard Test Method for Fire Tests of Door Assemblies, Including Positive Pressure Testing of Side-Hinged and Pivoted Swinging Door Assemblies.	Withdrawn	No replacement.

TABLE 10—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV AMERICA, INC.

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 3 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 3 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 3 below).

TABLE 10—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV AMERICA, INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 3 below).
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 3 below).
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 3 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 3 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 3 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 3 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 3 below).
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 2 below).
UL 1097 Double Insulation Systems for Use in Electrical Equipment.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

TABLE 11—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV PRODUCT SERVICES GmbH

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 3 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 3 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 3 below).
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 3 below).

TABLE 11—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV PRODUCT SERVICES GmbH—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 3 below).
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 3 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 3 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 3 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 3 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 3 below).
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 3 below).
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

TABLE 12—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV RHEINLAND OF NORTH AMERICA, INC.

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
ANSI A90.1 Safety Standard for Belt Manlifts	29 CFR 1910.68 does not require testing and certification for covered product(s); also not an appropriate test standard because it covers primarily the manufacture, installation, maintenance, inspection, and operation of manlifts, not safety testing.	NA.
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 3 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 3 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 3 below).
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 3 below).
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 3 below).

TABLE 12—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV RHEINLAND OF NORTH AMERICA, INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 3 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 3 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 3 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 3 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 3 below).
UL 983 Surveillance Camera Units	Withdrawn	No replacement.
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 3 below),
UL 1097 Double Insulation Systems for Use in Electrical Equipment.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1414 Across-the-Line, Antenna-Coupling, and Line- by-Pass Capacitors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 2106 Field Erected Boiler Assemblies	No requirement for NRTL approval in OSHA requirements; test standard applies to boilers burning fuel.	NA.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

TABLE 13—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORIES INC.

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
ANSI/NFPA 20 Installation of Stationary Fire Pumps for Fire Protection.	Not an appropriate test standard because it covers primarily the selection and installation of these pumps, not safety testing.	NA.
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 187 X Ray Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 207 Refrigerant-Containing Components and Accessories, Nonelectrical.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 343 Pumps for Oil-Burning Appliances	No requirement for NRTL approval of this type of pump.	NA.
UL 512 Fuseholders	Withdrawn	UL 4248–1 Fuseholders—Part 1: General Requirements. UL 4248–4 Fuseholders—Part 4: Class CC. UL 4248–5 Fuseholders—Part 5: Class G. UL 4248–6 Fuseholders—Part 6: Class H. UL 4248–8 Fuseholders—Part 8: Class J. UL 4248–9—Fuseholders—Part 9: Class K.

TABLE 13—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORIES INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
		UL 4248–11 Fuseholders—Part 11: Type C (Edison Base) and Type S Plug Fuse. UL 4248–12 Fuseholders—Part 12: Class R. UL 4248–15 Fuseholders—Part 15: Class T (for all replacement standards, see Note 3 below).
UL 544 Medical and Dental Equipment	Withdrawn	UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety (see Note 2 below).
UL 651B Continuous Length HDPE Conduit	Withdrawn	UL 651A Schedule 40 and 80 High Density Polyethylene (HDPE) Conduit (see Note 2 below).
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches.	Withdrawn	UL 60745–2–2 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–2: Particular Requirements for Screwdrivers and Impact Wrenches (see Note 2 below).
UL 745–2–4 Particular Requirements for Sanders.	Withdrawn	UL 60745–2–4 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–4: Particular Requirements for Sanders and Polishers Other Than Disk Type (see Note 2 below).
UL 745–2–6 Particular Requirements for Hammers.	Withdrawn	UL 60745–2–6 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–6: Particular Requirements for Hammers (see Note 2 below).
UL 745–2–8 Particular Requirements for Shears and Nibblers.	Withdrawn	UL 60745–2–8 Hand-Held Motor-Operated Electric Tools Safety—Part 2–8: Particular Requirements for Shears and Nibblers (see Note 2 below).
UL 745–2–9 Particular Requirements for Tappers.	Withdrawn	UL 60745–2–9 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–9: Particular Requirements for Tappers (see Note 2 below).
UL 745–2–11 Particular Requirements for Reciprocating Saws.	Withdrawn	UL 60745–2–11 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–11: Particular Requirements for Reciprocating Saws (see Note 2 below).
UL 745–2–12 Particular Requirements for Concrete Vibrators.	Withdrawn	UL 60745–2–12 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–12: Particular Requirements For Concrete Vibrators (see Note 2 below).
UL 745–2–30 Particular Requirements for Staplers.	Withdrawn	UL 60745–2–16 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers (see Note 3 below).
UL 745–2–33 Particular Requirements for Portable Bandsaw.	Withdrawn	UL 60745–2–20 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–20: Particular Requirements For Band Saws (see Note 2 below).
UL 745–2–34 Particular Requirements for Strapping Tools.	Withdrawn	UL 60745–2–18 Hand-Held Motor-Operated Electric Tools—Safety—Part 2–18: Particular Requirements For Strapping Tools (see Note 2 below).
UL 746A Polymeric Materials Short Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746B Polymeric Materials Long Term Property Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746C Polymeric Materials—Use in Electrical Equipment Evaluations.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed-Wiring Boards.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

TABLE 13—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORIES INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations.	Withdrawn	UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 796 Printed-Wiring Boards	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 877 Circuit Breakers and Circuit Breaker Enclosures for Use in Hazardous (Classified) Locations (UL 1203).	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 894 Switches for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 983 Surveillance Camera Units	Withdrawn	No replacement.
UL 1002 Electrically Operated Valves for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 1005 Electric Flatirons	Withdrawn	UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons (see Note 3 below).
UL 1010 Receptacle Plug Combinations for Use in Hazardous (Classified) Locations.	Withdrawn	UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations (see Note 2 below).
UL 1075 Gas-Fired Cooking Appliances for Recreational Vehicles.	Withdrawn	No replacement.
UL 1097 Double Insulation Systems for Use in Electrical Equipment.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1413 High Voltage Components for Television Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1414 Across-the-Line, Antenna-Coupling, and Line- by-Pass Capacitors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1417 Special Fuses for Radio- and Television-Type Appliances.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1433 Control Centers for Changing Message Type Electric Signs.	Withdrawn	No replacement.
UL 1445 Electric Water Bed Heaters	Withdrawn	No replacement.
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations.	Withdrawn	ANSI/ISA—12.12.01–2012 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations (see Note 2 below).
UL 1664 Immersion Detection Circuit Interrupters.	Withdrawn	No replacement.
UL 1666 Test for Flame Propagation Height of Electrical and Optical Fiber Cables Installed Vertically in Shafts.	Test method; therefore, not an appropriate test standard.	NA.

TABLE 13—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORIES INC.—Continued

Proposed deleted test standard	Reason for proposed deletion	Proposed replacement test standard(s) (if applicable)
UL 1684 Reinforced Thermosetting Resin Conduit (RTRC) and Fittings.	Withdrawn	UL 2420 Belowground Reinforced Thermosetting Resin Conduit (RTRC) and Fittings and UL 2515 Aboveground Reinforced Thermosetting Resin Conduit (RTRC) and Fittings (for both replacement standards, see Note 3 below).
UL 1686 Pin and Sleeve Configurations	Not an appropriate test standard; does not specify safety requirements for covered devices; provides the physical dimensions for covered devices only.	NA.
UL 1692 Polymeric Materials Coil Forms	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 1694 Tests for Flammability of Small Polymeric Component Materials).	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.
UL 2106 Field Erected Boiler Assemblies	No requirement for NRTL approval in OSHA requirements; test standard applies to boilers burning fuel.	NA.
UL 60691 Thermal-Links-Requirements and Application Guide.	No requirement for NRTL approval because the standard covers components that are not appropriate for use as end-use products.	NA.

Note 2: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Moreover, OSHA already includes the proposed replacement test standard in the NRTL's scope of recognition. Therefore, no further demonstration of capability is necessary at this time.

Note 3: OSHA believes the proposed replacement test standard is comparable to the withdrawn test standard. Therefore, OSHA proposes to incorporate the replacement test standard into the NRTLs' scopes of recognition without requiring the NRTL to further demonstrate capability, as specified by 29 CFR 1910.7(b)(1).

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on June 20, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–15228 Filed 6–25–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

DATE AND TIME: The Legal Services Corporation's Audit Committee will meet telephonically on July 2, 2013. The meeting will commence at 11:00 a.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's April 15, 2013 meeting.
3. Discussion regarding risk assessment by Management and the Office of Inspector General.
   - James Sandman, President
   - Ronald Flagg, Vice President of Legal Affairs and General Counsel
   - David Richardson, Treasurer/Comptroller
   - Jeffrey Schanz, Inspector General
4. Discussion of procedures relating to OIG investigation and audit reports that result in follow-up work by the Office of Compliance and Enforcement.
   - Jeffrey Schanz, Inspector General
   - Lora Rath, Director, Office of Compliance and Enforcement
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or

FR_NOTICE_QUESTIONS@lsc.gov, at least 2 business days in advance of the meeting.

If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 24, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–15443 Filed 6–24–13; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that twelve meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506 as follows (ending times are approximate; all times are Eastern Daylight Time):

Visual Arts (application review): Room 730. This meeting will be closed.

Dates: July 10, 2013; 9:00 a.m. to 4:30 p.m.

Arts Education (application review): Room 716. This meeting will be closed.

Dates: July 11, 2013; 9:00 a.m. to 5:00 p.m.

Visual Arts (application review): Room 730. This meeting will be closed.

Dates: July 11, 2013; 9:00 a.m. to 4:30 p.m.

Theater & Musical Theater (application review): Room 627. This meeting will be closed.

Dates: July 11–12, 2013; From 9:00 a.m. to 5:30 p.m. on July 11th and from 9:00 a.m. to 1:00 p.m. on July 12th.

Museums (application review): Room 730. This meeting will be closed.

Dates: July 15, 2013; 9:00 a.m. to 5:30 p.m.

Music (application review): Room 714. This meeting will be closed.

Dates: July 15, 2013; 10:00 a.m. to 4:00 p.m.

Museums (application review): Room 730. This meeting will be closed.

Dates: July 16, 2013; 10:00 a.m. to 5:30 p.m.

Music (application review): Room 714. This meeting will be closed.

Dates: July 16, 2013; 10:00 a.m. to 4:00 p.m.

Arts Education (application review): Room 716. This meeting will be closed.

Dates: July 17–18, 2013; From 9:00 a.m. to 6:00 p.m. on July 17th and from 9:00 a.m. to 2:30 p.m. on July 18th.

Theater & Musical Theater (application review): Room 627. This meeting will be closed.

Dates: July 17–18, 2013; From 9:00 a.m. to 5:30 p.m. on July 17th and from 9:00 a.m. to 1:00 p.m. on July 18th.

Arts Education (application review): By teleconference. This meeting will be closed.

Dates: July 25, 2013; 1:00 p.m. to 3:00 p.m.

Literature (application review): Room 716. This meeting will be closed.

Dates: July 31, 2013; 9:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov* or call 202–682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: June 21, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–15277 Filed 6–25–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of this collection of information requirements by August 26, 2013.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov*.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title: Experimentation with Factual Knowledge of Science Survey Items.

OMB Approval Number: 3145–NEW.

Expiration Date: Not applicable.

Overview of this information collection: The National Science Foundation Act of 1950 as amended (42 U.S.C. 1862) authorizes the National Science foundation to ''initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs in the mathematical, physical, medical, biological, social, and other sciences.'' The America COMPETES

Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, established the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation. NCSES supports surveys that measure the level of basic factual knowledge of science among the American public and prepares information on this topic for dissemination in *Science and Engineering Indicators,* a biennial publication of the National Science Board (NSB), NSF's governing body. Survey questions cover topics in biology, chemistry, physics, astronomy, and other sciences. NCSES is proposing to conduct a series of survey-based experiments in which question wording and content are systematically varied in order to test the sensitivity of survey measures of factual knowledge of biological evolution and the origins of the universe to variations in question design. These experiments will be conducted via an Internet survey. Data from these experiments may be used in *Science and Engineering Indicators* to address the effects of question design on survey estimates of public science knowledge and the relationship between understanding and acceptance of scientific conclusions. Results from this research may also be reported in scholarly research publications.

Expected Respondents: Approximately 3,500 U.S. adults (persons aged 18+) will be responding to the survey.

Estimate of Burden: The Foundation estimates that, on average, 15 minutes per respondent will be required to complete the survey. The annual respondent burden for completing the survey is therefore estimated at 875 hours, based on 3,500 respondents.

Dated: June 20, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–15217 Filed 6–25–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 052–00026; NRC–2008–0252]

Vogtle Electric Generating Plant, Unit 4; Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of inspections, tests, analyses, and acceptance criteria completion.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) E.2.5.04.05.05.01, for the Vogtle Electric Generating Plant, Unit 4.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Brian Anderson, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–9967, email: *Brian.Anderson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Licensee Notification of Completion of ITAAC

On May 7, 2013, Southern Nuclear Operating Company, Inc. (the licensee) submitted an ITAAC closure notification (ICN) under § 52.99(c)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR) informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses for ITAAC E.2.5.04.05.05.01, and that the specified acceptance criteria are met for Vogtle Electric Generating Plant, Unit 4 (ADAMS Accession No. ML13127A390). This ITAAC was approved as part of the issuance of the combined license, NPF–92, for this facility.

NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Vogtle Electric Generating Plant, Unit 4, ITAAC E.2.5.04.05.05.01. This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF), dated June 5, 2013 (ADAMS Accession No. ML13162A231). The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. The ICN presents a narrative description of how the ITAAC was completed, and the NRC's ICN review process involves a determination on whether, among other things, (1) the ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) the ICN provides sufficient information to demonstrate that the acceptance criteria are met; and (3) any required inspections for the ITAAC have been completed and any ITAAC findings associated with the ITAAC have been closed.

The NRC staff's determination of the successful completion of this ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If new information disputes the NRC staff's determination, this ITAAC will be reopened as necessary. The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for this ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of this

ITAAC will be reflected on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html.*

Dated at Rockville, Maryland, this 19th day of June 2013.

For the Nuclear Regulatory Commission.

Brian Anderson,

Senior Project Manager, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–15261 Filed 6–25–13; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: RUIA Investigations and Continuing Entitlement; OMB 3220–0025.

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day remuneration is payable or accrues to the claimant. Also Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB-provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, an investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following four forms to obtain information from railroad employers, nonrailroad employers, and claimants, that is needed to determine whether a claimed day or days of unemployment or sickness were improperly or fraudulently claimed: Form ID–5i, Request for Employment Information; Form ID–5R (SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; Form ID–49R, Railroad Payroll Record Check; and Form UI–48, Statement Regarding Benefits Claimed for Days Worked. Completion is voluntary. One response is requested of each respondent.

To qualify for unemployment or sickness benefits payable under Section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following forms to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, Statement of Employment and Wages; Form UI–23, Statement of Service for Railroad Unemployment Insurance Benefits; Form UI–44, Claim for Credit for Military Service; Form ID–4F, Advising of Ineligibility for Unemployment Benefits; Form ID–4U, Advising of Service/Earnings Requirements for Unemployment Benefits; Form ID–4X, Advising of Service/Earnings Requirements for Sickness Benefits; Form ID–4Y, Advising of Ineligibility for Sickness Benefits; Form ID–20–1, Advising that Normal Unemployment Benefits Are About to Be Exhausted; Form ID–20–2, Advising the Normal Sickness Benefits Are About to Be Exhausted; and Form ID–20–4, Advising That Normal Sickness Benefits Are About to Be Exhausted/Non-Entitlement. Completion of these forms is required to obtain or retain a benefit. Response is required of each respondent. The RRB proposes to add to Items 4a and 5a of Form UI–48, Statement Regarding Benefits Claimed for Days Worked, two ''go to'' references to improve navigating the form. The RRB also proposes to remove the following seven forms from the information collection due to under 10 responses a year: ID–4F, ID–4Y, ID–20–1, ID–20–2, ID–20–4, ID–49R, and UI–23.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
ID–5i	1,050	15	262
ID–5R (SUP)	400	10	67
UI–48	14	12	3
UI–9	69	10	11
UI–44	10	5	1
ID–4U	35	5	3
ID–4X	25	5	2

ESTIMATE OF ANNUAL RESPONDENT BURDEN—Continued

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
Total	1,603		349

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2013–15245 Filed 6–25–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30564; File No. 812–14109]

American Family Life Insurance Company, et al.

June 20, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'').

APPLICANTS: American Family Life Insurance Company (the ''Company''), American Family Variable Account I (the ''Life Account''), and American Family Variable Account II (the ''Annuity Account'') (together, the ''Applicants'').

SUMMARY OF APPLICATION: The Applicants seek an order pursuant to Section 26(c) of the 1940 Act, approving the substitution of shares of the Vanguard Money Market Portfolio (''Replacement Portfolio'') of the Vanguard Variable Insurance Fund (''Vanguard Fund'') for Initial Class Shares of the Fidelity Variable Insurance Products Money Market Portfolio (''Replaced Portfolio'') of the Fidelity Variable Insurance Products Fund (''Fidelity Fund''), currently held by the Life Account and the Annuity Account (each an ''Account,'' together, the ''Accounts'') to support variable life insurance and annuity contracts issued by the Company (collectively, the ''Contracts'').

DATES: *Filing Date:* The application was filed on January 8, 2013, and the amended and restated application was filed on May 16, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 15, 2013, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

APPLICANTS: David C. Holman, Esq., American Family Life Insurance Company, 6000 American Parkway, Madison, Wisconsin 53783–0001; Thomas E. Bisset, Esq., Sutherland Asbill & Brennan LLP, 700 Sixth Street NW., Suite 700, Washington, DC 20001–3980.

FOR FURTHER INFORMATION CONTACT: Patrick Scott, Senior Counsel, or Michael Kosoff, Branch Chief, Insured Investments Office, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations:

1. American Family Life Insurance Company conducts a conventional life insurance business and is authorized to transact the business of life insurance, including annuities, in twenty-seven states. For purposes of the 1940 Act, the Company is the depositor and sponsor of each of the Accounts as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

2. The Annuity Account and the Life Account issue Contracts and the Company owns the assets of each Account attributable to a Contract. Such assets are held separately from the other assets of the Company for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act and is registered with the Commission as a unit investment trust.[1] Each Account is comprised of a number of subaccounts and each subaccount invests exclusively in one of the insurance dedicated mutual fund portfolios made available as investment vehicles underlying the Contracts. Currently, the Replaced Portfolio is available as an investment option under the Company's variable life insurance and variable annuity Contracts.

3. The Fidelity Fund is registered[2] as an open-end management investment company under the 1940 Act and currently offers five (5) investment portfolios, each with multiple share classes. The Fidelity Fund issues a series of shares of beneficial interest in connection with each portfolio and has registered such shares under the Securities Act of 1933 (''1933 Act'') on Form N–1A.[3]

4. Each portfolio of the Fidelity Fund has entered into an advisory agreement with Fidelity Management & Research Company (''FMR'') under which FMR acts as investment adviser for the portfolio.

5. Neither the Fidelity Fund, any of its portfolios, nor subadvisers are affiliated with the Applicants. The Fidelity Fund

[1] File No. 811–10097 (the Life Account); File No. 811–10121 (the Annuity Account).

[2] File No. 811–05361.

[3] File No. 33–17704.

does not have manager-of-managers relief for the Replaced Portfolio.

6. The Vanguard Fund is registered as an open-end management investment company under the 1940 Act [4] and currently offers seventeen (17) portfolios, including the Replacement Portfolio. The Vanguard Fund issues a series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A.[5]

7. Pursuant to an investment advisory agreement between the Replacement Portfolio and The Vanguard Group, Inc. (''Vanguard''), Vanguard provides investment advisory services to the Replacement Portfolio. Vanguard manages the Replacement Portfolio subject to the supervision and oversight of the Replacement Portfolio's board of directors.

8. Neither the Vanguard Fund, any of its portfolios, nor Vanguard are affiliated with the Applicants. The Vanguard Fund and Vanguard have received an order from the Commission that allows the Vanguard Fund and Vanguard to utilize a multi-manager structure to manage the assets of the Replacement Portfolio. Pursuant to the order, Vanguard is permitted to select sub-advisers that are not affiliates of Vanguard (other than by virtue of serving as investment advisers to one or more Vanguard funds) and revise selected advisory agreements without obtaining shareholder approval, subject to the approval of the Vanguard Fund board of trustees and certain other conditions.

9. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity contracts (file no. 333–45592) provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. The variable life insurance contracts (file nos. 333–44956 and 333–147408) provide for the accumulation of values on a variable basis, fixed basis, or both, throughout the insured's life, and for a substantial death benefit upon the death of the insured. Under each of the Contracts, the Company reserves the right to substitute shares of one fund for shares of another, or of another investment portfolio, including a portfolio of a different management company. Applicant state that the prospectus for the Contracts and the Accounts contain appropriate disclosure of this right.

10. For as long as a variable life insurance Contract remains in force or a variable annuity Contract has not yet been annuitized, a Contract owner may transfer all or any part of the Contract value from one subaccount to another subaccount or to a fixed account.

11. The Company proposes to substitute shares of the Replacement Portfolio for Initial Class shares of the Replaced Portfolio currently held in the Accounts (the ''proposed substitution'').

12. The application states that, the proposed substitution is part of an effort by the Company to provide a portfolio selection within the Contracts that: (1) Provides competitive long-term returns relative to other funds in the asset class peer group with lower investment risk; (2) provides a more competitive fee structure relative to other funds in the asset class peer group; and (3) maintains the goal of offering a mix of investment options covering basic categories in the risk/return spectrum.

13. The application states that, replacing the Replaced Portfolio with the Replacement Portfolio is appropriate and in the best interests of Contract owners because the stated investment objective, principal investment strategies, and principal investment risks of the Replacement Portfolio are substantially similar to those of the Replaced Portfolio, so that Contract owners will have continuity in investment expectations with somewhat lower risk. A comparison of the investing objectives, strategies, and risks of the Replaced Portfolio and the Replacement Portfolio is included in the application.

14. The following charts compare advisory fees, other expenses, and total operating expenses for the year ended December 31, 2012, expressed as an annual percentage of average daily net assets, of the Replaced Portfolio and the Replacement Portfolio. Neither the Replaced Portfolio nor the Replacement Portfolio impose a redemption fee.

	Replaced portfolio—Fidelity VIP money market portfolio (initial class) as of 12/31/12 (percent)	Replacement portfolio—Vanguard money market portfolio as of 12/31/12 (percent)
Advisory Fees	0.17	0.12
12b–1 Fee	N/A	N/A
Other Expenses	0.09	0.04
Total Expenses	[6] 0.26	0.16
Less Contractual Fee	N/A	N/A
Waivers and Expense Reimbursements		
Net Expenses	0.26	[7] 0.16

15. Applicants state that they believe that the Replacement Portfolio is an appropriate replacement for the Replaced Portfolio for each Contract, and that the Replacement Portfolio represents an investment option that is more compatible with the Replaced Portfolio than are any other investment options under the Contracts.

16. The Replacement Portfolio for the fiscal years ended 2012, 2011, 2010 and 2009 has a significantly lower expense ratio than the Replaced Portfolio. In light of the substantial level of assets of the Replacement Portfolio, the continued decline of the level of assets of the Replaced Portfolio, and the lower expense ratio of the Replacement

[4] File No. 811–05962.

[5] File No. 33–32216.

[6] FMR has voluntarily agreed to reimburse the Initial Class of the Replaced Portfolio to the extent total operating expenses (excluding interest, taxes, brokerage commissions, and extraordinary expenses) as a percentage of average net assets exceed 0.40%.

[7] Vanguard and the Replacement Portfolio's board of directors have agreed to temporarily limit certain net operating expenses in excess of the Replacement Portfolio's daily yield to maintain a zero or positive yield for the Portfolio. Vanguard and the Replacement Portfolio's board of directors may terminate the expense limitation at any time. The ratio of total expenses to average net assets after the voluntary expense limitation was 0.06%.

Portfolio, Applicants believe that the Replacement Portfolio is a viable money market investment option for the Contracts whose expenses should not trend upward over time.

17. Applicants maintain that Contract owners will be better served by the proposed substitution and that the proposed substitution is appropriate given the Replacement Portfolio, the Replaced Portfolio, and other investment options available under the Contracts. For each one-year, five-year and ten-year period ended December 31, 2012, the Replacement Portfolio has had investment performance comparable to that of the Replaced Portfolio, but with lower investment risk.

Legal Analysis and Conditions

1. The Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the proposed substitution. Section 26(c) of the 1940 Act requires the depositor of a registered unit investment trust holding securities of a single issuer to obtain Commission approval before substituting the securities held by the trust.

2. The proposed substitution is not the type of substitution that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts and the fixed account. Moreover, the application asserts, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccount into any of the remaining subaccounts without cost or disadvantage. The proposed substitution, therefore, will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

3. Applicants believe that Contract owners will be better off with the Replacement Portfolio than with the Replaced Portfolio. The proposed substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts. If the proposed substitution is carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitution.

4. Applicants believe that the Replacement Portfolio and the Replaced Portfolio are substantially the same in their stated investment objectives and principal investment strategies as to afford investors continuity of investment and risk. In addition, Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

5. Supplements to the prospectus for the Contracts dated January 29, 2013, disclosed the Company's intent to seek the order approving the substitution; moreover the supplements disclosed that from the date of the supplement until the date of the proposed substitution, the Company will not exercise any rights reserved by it under any Contract to impose additional charges for transfers until at least 30 days after the proposed substitution. Similarly, the supplements disclosed that from the date of the supplement until the date of the proposed substitution, the Company will permit Contract owners to transfer Contract value out of the subaccount currently holding shares of the Replaced Portfolio to other subaccounts and the fixed account without those transfers being treated as transfers for purposes of determining the remaining number of transfers that may be permitted in the Contract year without a transfer charge. In addition, prospectuses for the Contracts dated May 1, 2013 disclosed substantially similar information as set forth in the supplements.

6. Within five days after the proposed substitution, Contract owners who are affected by the substitution will be sent a written notice informing them that the substitution was carried out. The notice will also reiterate the facts that the Company: (1) Will not exercise any rights reserved by it under any of the Contracts to impose additional charges for transfers until at least 30 days after the proposed substitution, and (2) will, for at least 30 days following the proposed substitution, permit such Contract owners to transfer Contract values out of the subaccount holding shares of the Replacement Portfolio to other subaccounts and the fixed account without those transfers being treated as transfers for purposes of determining the remaining number of transfers permitted in the Contract year without a transfer charge.

7. Applicants represent that the Company will carry out the proposed substitution by redeeming shares of the Replaced Portfolio held by the Accounts for cash and applying the proceeds to the purchase of shares of the Replacement Portfolio. The proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investment in either of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitution, nor will their rights or the Company's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitution, including brokerage commissions and legal, accounting, and other fees and expenses, will be paid by the Company. In addition, the proposed substitution will not impose any tax liability on Contract owners. The proposed substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitution than before the proposed substitution.

8. Applicants represent that the proposed substitution will not be treated as a transfer of Contract value for the purpose of assessing transfer charges or for determining the number of remaining ''free'' transfers in a Contract year. The Company will not exercise any right it may have under the Contracts to impose additional charges for Contract value transfers under the Contracts for a period of at least 30 days following the proposed substitution. Similarly, from the date of the supplements until the date of the proposed substitution, the Company will permit Contract owners to make transfers of Contract value out of the Replaced Portfolio subaccount to other subaccounts or the fixed account without those transfers being treated as transfers for purposes of determining the remaining number of transfers permitted in the Contract year without a transfer charge. Likewise, for at least 30 days following the proposed substitution, the Company will permit Contract owners affected by the substitution to transfer Contract value out of the Replacement Portfolio subaccount to other subaccounts or the fixed account without those transfers being treated as transfers for purposes of determining the remaining number of transfers permitted in the Contract year without a transfer charge.

9. The Applicants acknowledge that reliance on the exemptive relief requested herein, if granted, depends upon compliance with all of the representations and conditions set forth in this Application.

10. The Applicants represent that they will not receive, for three years from the date of the substitution, any direct or indirect benefits paid by the Replacement Portfolio, its advisors or underwriters (or their affiliates), in

connection with assets attributable to Contracts affected by the substitution, at a higher rate than Applicants have received from the corresponding Replaced Portfolio, its advisors or underwriters (or their affiliates), including, without limitation, Rule 12b–1 fees, revenue sharing, or other service fees or arrangements in connection with such assets. Applicants represent that the substitution is not motivated by any financial consideration paid or to be paid to the Company or its affiliates by the Replacement Portfolio, its advisors, underwriters, or their respective affiliates.

11. Applicants represent that the Company is also seeking approval of the proposed substitution from any state insurance regulators whose approval may be necessary or appropriate.

12. The Applicants submit that the proposed substitution meets the standards set forth in Section 26(c) and assert that the replacement of the Existing Fund with the Replacement Fund is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conclusion:

For the reasons and upon the facts set forth above and in the application, the Applicants assert that the requested order meets the standards set forth in Section 26(c) of the 1940 Act and should therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15242 Filed 6–25–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69809; File No. SR–MIAX–2013–30]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to $0.50 and $1 Strike Price Intervals for Classes in the Short Term Option Series Program

June 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 13, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 404, Series of Option Contracts Open for Trading, by adopting Interpretations and Policies .09 to the rule to describe the manner of expiration and the strike price intervals of options series included in the Exchange's $1 Strike Price Interval Program, and by modifying Interpretations and Policies .02(e) to the rule to describe strike price intervals for options series that are included in the Exchange's Short Term Option Series Program.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Interpretations and Policies .09 to Exchange Rule 404 to state that, notwithstanding any other provision regarding strike prices in the rule, Related non-STOS [4] shall be opened on the Thursday or Friday prior to the expiration week that such Related non-STOS (such as, for example, series with standard monthly or quarterly expirations) expire in the same manner as permitted in Rule 404, Interpretations and Policies .02, and in the same strike price intervals for the STOS permitted in Rule 404, Interpretations and Policies .02(e).

The Exchange further proposes to amend Interpretations and Policies .02(e) to Exchange Rule 404 to provide that the strike price interval for STOS may be $0.50 or greater for option classes that trade in $1 strike price intervals and are in the STOS Program. If the class does not trade in $1 strike price intervals, the strike price interval for STOS may be $0.50 or greater where the strike price is less than $75 and $1.00 or greater where the strike price is between $75 and $150, and the same as strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle for strike prices greater than $150. Notwithstanding any other provision regarding strike prices in the rule, Related non-Short Term Option series shall be opened on the Thursday or Friday prior to the expiration week that such Related non-Short Term Option series expire in the same manner as permitted in Rule 404, Commentary .02, and in the same strike price intervals for the STOS permitted in this [sic] Rule 404, Commentary .02 (e).

This is a competitive filing that is based on recent filings by the International Securities Exchange, LLC (''ISE''), NASDAQ OMX PHLX, LLC (''PHLX'') and NYSE MKT LLC (''NYSE MKT'').[5] The ISE, PHLX and NYSE MKT filings made changes to the strike price interval setting parameter rules for their respective STOS Programs. STOS options are not listed to expire during the same week as non-Short Term Option series. As a result, ISE, PHLX and NYSE MKT amended their rules to permit non-Short Term Option series to have the same strike price interval setting parameters for STOS during the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange may open for trading on any Thursday or Friday that is a business day ''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next consecutive Fridays that are business days (''Short Term Option Series'' or ''STOS'').

[4] Proposed Rule 404, Interpretations and Policies .02(e) defines a ''Related non-Short Term Option'' as a non-Short Term Option series that is included in a class that has been selected to participate in the Short Term Option Series Program.

[5] *See* Securities Exchange Act Release Nos. 67754 (August 29, 2012), 77 FR 54629 (September 5, 2012) (Order approving SR–ISE–2012–33) (''ISE filing''); 69633 (May 23, 2012), 78 FR 32498 (May 30, 2013) (SR–Phlx–2013–55) (''PHLX filing''); 68074 (October 19, 2012), 77 FR 65241 (October 25, 2012) (SR–CBOE–2012–92); and 68193 (November 8, 2012), 77 FR 68177 (November 15, 2012) (Notice of Filing and Immediate Effectiveness of SR–NYSEMKT–2012–53).

week that non-Short Term Option series expire.

ISE and PHLX also both amended the strike price interval setting parameters for their STOS Programs, but the revisions to their respective rules differ. Specifically, ISE permits $0.50 strike price intervals for Weekly [6] options for option classes that trade in one dollar increments and are in the STOS Program.[7] PHLX permits $0.50 strike price intervals when the strike price is below $75, and $1 strike price intervals when the strike price is between $75 and $150, or $0.50 for classes that trade in one dollar increments in Related non-Short Term Options and that participate in the STOS Program. PHLX also provides that related non-Weekly option series may be opened during the week prior to expiration week pursuant to the same strike price interval parameters that exist for Weekly options. Thus a related non-Weekly option may be opened in Weekly option strike price intervals on a Thursday or a Friday that is a business day before the non-Weekly option expiration week.[8] If PHLX is not open for business on the respective Thursday or Friday, however, the non-Weekly option may be opened in Weekly option intervals on the first business day immediately prior to that respective Thursday or Friday.[9]

The Exchange proposes herein to adopt rules that are in effect on NYSE MKT in order to remain competitive regarding strike price interval setting parameters. The Exchange notes that while it believes that there is substantial overlap between the two strike price interval setting parameters, the Exchange believes there are gaps that would enable PHLX to initiate a series that ISE would not be able to initiate and vice versa [sic].[10] Since uniformity is not required for the STOS Programs that have been adopted by the various options exchanges, the Exchange proposes to revise its strike price intervals setting parameters so that it has the ability to initiate strike prices in the same manner (*i.e.,* intervals) as both ISE and PHLX, and thus in the same manner currently in place on NYSE MKT. Accordingly, just as with NYSE MKT, the Exchange proposes to adopt aspects of both the ISE rule text language and the PHLX rule text language approved by the Commission.

The STOS Program is codified in Interpretations and Policies .02 to Exchange Rule 404. The rule states that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading, on any Thursday or Friday that is a business day, series of options on no more than twenty-five option classes that expire on the Friday of the following business week that is a business day. In addition to the twenty-five option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes may be initially opened for trading.[11] Furthermore, the strike price of each STOS has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to the current program limitations. The Exchange proposes only to specify that STOS can have interval prices of $0.50 and $1, as proposed under Interpretations and Policies .02(e) to Rule 404.

The principal reason for the proposed interval pricing structure is market demand for weekly options. There is continuing strong customer demand for having the ability to execute hedging and trading strategies effectively via STOS, particularly in the current fast, multi-faceted trading and investing environment that extends across numerous markets and platforms.[12] The Exchange has observed increased demand for STOS classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or when large market, sector, or individual issue price swings have occurred. The STOS Program is one of the most popular and quickly expanding options expiration programs.

The Exchange believes that the benefits of the ability to trade STOS at $0.50 and $1 intervals at lower price levels cannot be underestimated. The proposed intervals would clearly allow traders and investors, and in particular public (retail) investors to more effectively and with greater precision consummate trading and hedging strategies on the Exchange. The Exchange believes that this precision is increasingly necessary, and in fact crucial, as traders and investors engage in trading and hedging strategies across various investment platforms (*e.g.,* equity and ETF, index, derivatives, futures, foreign currency, and even commodities products); particularly when many of these platforms enjoy substantially smaller strike price differentiations (*e.g.,* as low as $0.05).[13]

[6] Short Term Options Series (''STOS'') are also known as ''Weekly options'' or ''weeklies'' and trade as such under the various exchanges' respective STOS Programs. For all practical purposes, the terms STOS, Weekly options, and weeklies are interchangeable.

[7] The permissible $0.50 strike price intervals may only be opened on the Weekly option Opening Date that expire on the Weekly option Expiration date and no additional series, including additional series of the related non-Weekly option, may be opened during expiration week in classes that are listed pursuant to ISE rules.

[8] This opening timing is consistent with the principle that the Exchange may add new series of options until two business days prior to expiration. *See* Exchange Rule 404(e).

[9] On the Exchange, the STOS opening process is set forth in MIAX Rule 404, Interpretations and Policies .02: After an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next consecutive Fridays that are business days (''Short Term Option Expiration Dates''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

[10] The Exchange and the majority, if not all, of the other options exchanges that have adopted a STOS Program have a similar rule that permits the listing of series that are opened by other exchanges, consistent with the Options Listing Procedures Plan (''OLPP''). *See* Exchange Rule 404A(b)(6). This filing is concerned with the ability to initiate series. For example, if a class is selected to participate in the STOS Program and non-STOS options on that class do not trade in dollar increments, the Exchange believes that PHLX would be permitted to initiate $0.50 strikes on that class and ISE would not. Similarly, the strike price interval for exchange-traded fund (''ETF'') options is generally $1 or greater where the strike price is $200 or less.

[11] However, if the Exchange opens twenty (20) short term options for a Short Term Option Expiration Date, up to 10 additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of STOS that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision).

[12] These include, without limitation, options, equities, futures, derivatives, indexes, exchange traded funds, exchange traded notes, currencies, and over-the-counter instruments.

[13] As an example, per the CME Web site, strike prices for options on futures may be at an interval of $.05, $.10, and $.25 per specified parameters. *See http://www.cmegroup.com/trading/equityindex/files/EQUITY_FLEX_Options.pdf* (options on S&P 500 and NASDAQ–100 contracts) and *http://www.cmegroup.com/rulebook/files/S_5734_x11-*

Continued

Weekly options have characteristics that are attractive for certain trading and hedging strategies. Thus, weeklies may be attractive for retail trading strategies that could benefit from the inherent accelerated time decay of weekly options, such as selling (buying) vertical or calendar spreads. And weeklies may be particularly attractive instruments for short-term institutional hedging needs (*e.g.,* sudden price movements against large option positions during expiration week; maintenance or adjustment of complex option positions) as well as for retail hedging needs (*e.g.,* preceding large earnings plays). In every case, trading and hedging is more effective when it can be closely tailored. The current wider STOS price intervals have negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange to list series with finer, narrower STOS intervals. The proposal would fix this.

The following is an example of how inadequately narrow STOS intervals negatively impact trading and hedging opportunities. If an investor needs to purchase an STOS call option in CSCO (03/26/12 closing price $20.84), the current $1 strike interval would offer less opportunity and choice for an investor seeking to keep cash expenditures low. For example, an investor wishing to buy an in-the-money call option for less than a $2.50 investment per call purchase has only two strike prices that meet his criteria from which to choose: The 19 strike and the 20 strike. Such call options with five days until expiration might offer ''ask prices'' (option premiums) of $1.75 and $.75. However, if CSCO had $0.50 strike prices as proposed, the same investor would have a selection of March 18.50, 19.00, 19.50, 20.00, and the 20.50 strike call options that may have options premiums from approximately $2.25 down to approximately $.25. This expanded range of strikes, and commensurate option premiums, offers far more choice and a considerably lower cost of entry to the investor, thereby garnering the investor more than a 66% options premium savings. Lower intervals increase effective liquidity by offering investors and traders more price points at which they may execute trading and hedging strategies.[14] This allows investors and traders the ability to more effectively execute their strategies at lower cost. Clearly, more efficient pricing is advantageous to all market participants, from retail to institutional investors. The changes proposed by the Exchange should allow execution of more trading and hedging strategies on the Exchange. The Exchange notes that in conformance with Exchange Rules, the Exchange shall not list $0.50 or $1 strike price intervals on Related non-STOS options within two (2) days of expiration. For example, if a Related non-STOS in an options class is set to expire on Friday, September 21, the Exchange could begin to trade $0.50 strike price intervals surrounding that Related non-STOS on Thursday, September 13, but no later than Friday September 14.

The Exchange proposes to list the expiring Related non-STOS on the Thursday or Friday prior to expiration week, so that investors can close a position in an expiring STOS and open a position at the same strike price in a Related non-STOS. The listing of the $0.50 or $1 strike price intervals for expiring Related non-STOS on the Thursday or Friday prior to expiration week is intended to be consistent with the ''overlap'' of STOS today, which facilitates investors desiring to ''roll'' a position from one STOS expiration to another. If the $0.50 or $1 interval strikes are not available until the opening on Monday of expiration week, an investor who had a position in the prior week's $0.50 or $1 interval STOS could not close a position in the expiring STOS and open a position at the same strike in the Related non-STOS.

Furthermore, the inadequate price intervals for STOS, particularly at the lower price levels proposed by the Exchange, may discourage retail and other customers from executing STOS orders when they could be the most advantageous for effective execution of trading and hedging strategies on regulated and transparent exchanges. The Exchange feels that it is essential that such negative, potentially costly and time-consuming impacts on retail investors are eliminated by offering tighter intervals within the STOS Program. The changes proposed by the Exchange should allow execution of more trading and hedging strategies on the Exchange.[15]

The Exchange also proposes that Related non-STOS shall be opened on the Thursday or Friday prior to the expiration week that such Related non-STOS expire in the same manner as permitted in Rule 404, Interpretations and Policies .02, and in the same strike price intervals for the STOS permitted in Rule 404, Interpretations and Policies .02(e). The Exchange proposes to make this change to ensure conformity between STOS options and Related non-STOS options that are in the same options class (*e.g.,* weekly and monthly SPY options). The Exchange believes that not having such a conforming change would be counter-productive and not beneficial for trading and hedging purposes.[16]

The Exchange believes that the STOS Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to reject trading requests because of the limitations imposed by the Program. For these reasons, the Exchange requests a modification of the strike price intervals in the Program and the opportunity to provide investors with better weekly option choices for investment, trading, and risk management purposes.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STOS Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange represents that it will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[17] in general, and furthers the

0518x Change in Listing Rules for Goldx Silverx Copper Options.pdf (options on metals contracts).

[14] Moreover, lower strike intervals provide additional price points for liquidity providers. This allows the liquidity providers to improve theoretical pricing as well as hedging capabilities, thereby enabling them to increase the size and quality of their markets.

[15] In addition, there is a competitive impact. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategies *(e.g.,* complex option spreads) wholly on their preferred market, namely the Exchange. Second, the proposal would diminish the potential for foregone market opportunities on the Exchange caused by the need to use a more advantageous (that is, interval-precise) platform than STOs currently allow.

[16] Moreover, the Exchange notes that STOS options are not listed and traded during the expiration week of the Related non-STOS options. During this week, the non-STOS options are materially and financially equivalent to the STOS options. The proposed change would allow traders and hedgers to have the noted benefits of the STOS Program during each week in a month.

[17] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act [18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that providing strike prices of $.50 and $1 intervals in STOS eligible classes will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that providing the same strike price intervals for options classes that are in the STOS Program and for the Related non-STOS options just prior to and during expiration week will provide the investing public and other market participants with additional opportunities to hedge their investment, thus allowing these investors to better manage their risk exposure. In addition, the Exchange believes that the proposal will ensure conformity between STOS options and Related non-STOS options that are in the same options class. The Exchange believes that allowing the listing of expiring Related non-STOS on the Thursday or Friday prior to expiration week will help facilitate the ability of investors and other market participants to close a position in an expiring STOS and open a position at the same strike price in a Related non-STOS in a manner that is designed to promote just and equitable principles of trade. While the expansion of the STOS Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to existing rules on other exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges with respect to their short term options programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay will allow MIAX to initiate strikes prices in more granular intervals for STOs in the same manner as other options exchanges, and permit, during the expiration week of a Related non-Short Term option, a Related non-Short Term Option on a class that is selected to participate in the Short Term Options Series Program to have the strike price interval setting parameters as STOs. In sum, the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2013–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–30 and should be submitted on or before July 17, 2013.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15225 Filed 6–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69810; File No. SR–NYSE–2013–41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 1000 To Increase the Price Threshold for Those Securities Ineligible for Automatic Executions From $1,000.00 or More to $10,000.00 or More

June 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 7, 2013, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 1000 to increase the price threshold for those securities ineligible for automatic executions from $1,000.00 or more to $10,000.00 or more. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 1000(a)(vi) (''Automatic Executions'') to increase the price level at which a security would be considered ''high-priced'' and thus ineligible for automatic execution. Rule 1000(a)(vi) prohibits automatic executions if the closing price for a security, or if the security did not trade, the closing bid price of the security on the Exchange on the immediate previous trading day, is $1,000 or more. The Exchange is proposing to increase this price level from $1,000 or more to $10,000 or more.[3]

The Exchange is proposing to make a conforming amendment to Rule 60(d)(iii)(B)(I), which provides that the Exchange keeps Autoquote[4] active, even if automatic executions are suspended under Rule 1000, if an order or a cancellation of an order arrives that would not result in a locked or crossed market in a security priced at $1,000 or more. The Exchange proposes to increase this price level to $10,000 or more to conform the provision to the proposed amendment to Rule 1000(a)(vi).

Securities priced at $1,000 or more are traded manually by the assigned Designated Market Maker (''DMM''). Rule 610 of Regulation NMS under the Act prohibits national securities exchanges and national securities associations from locking or crossing protected quotations,[5] and Rule 611 of Regulation NMS prohibits trade-throughs only of protected quotations.[6] Rule 600 of Regulation NMS, however, requires a protected quotation to be automated.[7] The Exchange's quotations in high-priced securities, therefore, are not protected quotations for purposes of Regulation NMS. The proposed rule change would allow the affected securities to be eligible for automatic execution and auto-quoting, which would allow the Exchange to protect its quotations and remain competitive with other market centers. For the affected securities, the proposal would align the availability of automatic executions on the Exchange with the availability of such executions on other exchanges.[8]

The Exchange is also proposing to make a conforming amendment to Rule 1000(a)(iv)(C), which sets out value ranges used to determine liquidity replenishment points (''LRPs''). LRPs are pre-determined price points that function to moderate volatility in a particular security, improve price continuity, and foster market quality by temporarily converting the electronic market to an auction market and permitting new trading interest to add liquidity.[9] Pursuant to Rule 60(d)(i), Autoquote is suspended when an LRP is reached.

LRPs are calculated by adding and subtracting an LRP value to a security's last sale price. The Exchange sets and disseminates a specific LRP value from a range of potential values. That range, in turn, is based upon a security price category (*e.g.,* $5 to $9.99) and the average daily volume of the security to which the value is being added. The LRP value chosen within an LRP value range is based on an examination of trading data. Because the Exchange is increasing the highest price per share at which automatic execution is available, the Exchange is making a conforming amendment to the highest security price category used to determine LRP values from $250 to $1000 to $250 to $10,000.

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that the proposal is consistent with (i) Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As a result of the proposed amendment, six additional securities would be eligible for automatic execution as of the date of this filing.

[4] Pursuant to Rule 60(d), the Exchange autoquotes the NYSE's highest bid or lowest offer to reflect interest in the Book, and when the highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders at the next highest (in the case of a bid) or lowest (in the case of an offer) price.

[5] 17 CFR 240.610(d)(1)(i).

[6] 17 CFR 240.611(a)(1).

[7] 17 CFR 240.600(b)(57)(iii).

[8] The Exchange is not aware of any other exchange that, by rule, does not issue protected quotations for a stock on a regular basis.

[9] The Exchange recently amended its rules to phase out the functionality associated with LRPs to coincide with the implementation of the Limit Up—Limit Down Plan. *See* Securities Exchange Act Release No. 69295 (April 4, 2013), 78 FR 21457 (April 10, 2013).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and (ii) Section 11A(a)(1) of the Act,[12] in that it seeks to ensure the economically efficient execution of securities transactions, fair competition among brokers and dealers and among exchange markets, and the practicability of brokers executing investors' orders in the best market.

Specifically, the Exchange believes that increasing the dollar threshold for high-priced securities would expand the eligibility of orders for automatic executions on the Exchange, thus removing impediments to and perfecting the mechanism of a free and open market and a national market system. Further, the Exchange believes the proposed amendment will foster cooperation and coordination with persons engaged in facilitating transactions in securities because the securities that will be affected by the amendment are already eligible for automatic executions on other markets. Thus, the proposal will align the Exchange's treatment of such securities with that of other exchanges.

Additionally, the Exchange believes that the proposal will further the objectives of Section 11A(a)(1) of the Act because, by increasing the number of securities eligible for automatic execution, the proposal will ensure that quotes on the Exchange will be protected from trade-throughs and not be locked or crossed by other markets. Exchange quotes in the affected securities will be included in the protected quotations and increase competition in the market. This increased competition and requirement that brokers respect Exchange quotes in the affected securities will increase the ability of brokers to execute investors' orders in the best market. Further, the proposal will assure the fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets because the proposal will promote order interaction and ensure that the Exchange's quotes in the affected securities will not be isolated from other market centers.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes will increase competition among execution venues and encourage additional liquidity. By allowing the affected securities to be eligible for automatic execution, the Exchange's quotes in such securities will be considered protected quotes and thus away markets will be required to route to the Exchange when better prices are available on the Exchange. The proposal will therefore increase order interaction and encourage competition in the affected securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay will allow the Exchange to align its treatment of the affected securities with that of other exchanges, threby assuring the economically efficient execution of securities transactions and fostering efficiency in the marketplace. Therefore, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

[12] 15 U.S.C. 78k–1(a)(1).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (Reg. NMS Adopting Release) (quoting H.R. Rep. 94–123, 94th Cong., 1st Sess. 50 (1975)) (''[W]hen Congress mandated the establishment of an NMS, it well stated this basic principle: 'Investors must be assured that they are participants in a system which maximizes the opportunities for the most willing seller to meet the most willing buyer.' '').

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–41 and should be submitted on or before July 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15227 Filed 6–25–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69811; File No. SR–Phlx–2013–67]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of its New Options Floor Broker Management System

June 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delay the implementation of its new Options Floor Broker Management System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to delay the implementation of the Exchange's enhancements to the Options Floor Broker Management System (''FBMS''). The Exchange received approval to implement the enhancements as of June 1, 2013,[3] but the Exchange needs additional time to do so in order to complete the applicable technology work. Accordingly, the Exchange seeks to be able to implement the changes by the end of July 2013; the Exchange will announce the specific date in advance through an Options Trader Alert.

Today, FBMS enables Floor Brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also establishes an electronic audit trail for options orders represented by Floor Brokers on the Exchange. Floor Brokers can use FBMS to submit orders to Phlx XL, rather than executing the orders in the trading crowd.

With the new FBMS, all options transactions on the Exchange involving at least one Floor Broker would be required to be executed through FBMS. In connection with order execution, the Exchange will allow FBMS to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after the Floor Broker has represented the orders in the trading crowd. FBMS will also provide Floor Brokers with an enhanced functionality called the complex calculator that will calculate and display a suggested price of each individual component of a multi-leg order, up to 15 legs, submitted on a net debit or credit basis.

The Exchange still intends to implement these enhancements with a trial period of two to four weeks, to be determined by the Exchange, during which the new FBMS enhancements and related rules would operate along with the existing FBMS and rules. The Exchange will announce the beginning and end of the trial period in advance.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enhancing FBMS to make the Exchange's markets more efficient, to the benefit of the investing public. Although the Exchange needs additional time to finalize the enhancements, the delay is expected to be short and will involve advance notice to the Exchange membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange continues to believe, as it stated when proposing these enhancements, that these enhancements to FBMS should result in the Exchange's trading floor operating in a more efficient way, which should help it compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR–Phlx–2013–09).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(a).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[9] The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can implement the enhancements once they are ready from a technology perspective.

The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will clarify that the delayed implementation of the FBMS will be effective and operative immediately. In addition, because the proposal only delays the implementation date of the FBMS and does not make any additional changes to the FBMS itself, it does not raise any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–67. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–67, and should be submitted on or before July 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15241 Filed 6–25–13; 8:45 am]

BILLING CODE 8011–01–P

the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69807; File No. SR–CBOE–2013–043]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Exchange Rule 9.21

June 20, 2013.

I. Introduction

On April 25, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on May 14, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to update Exchange Rule 9.21, ''Options Communications,'' to conform with changes recently made by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its corresponding rule.[4] The proposed changes to Exchange Rule 9.21 are designed to alert Trading Permit Holders (''TPHs'') to their requirements with respect to Options Communications while further regulating all communications for compliance with Exchange Rules and the Securities Exchange Act of 1934 (the ''Act'').

First, the proposed rule change amends Exchange Rule 9.21(a) to reduce the number of defined categories of communication from six (in the current rule) to three. The proposed three categories of communications are: Retail communications, correspondence, and institutional communications. Current definitions of ''sales literature,'' ''advertisement,'' and ''independently prepared reprint'' are combined into a single category of ''retail communications.'' Thus, the Exchange proposed to define ''retail communication'' as ''any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.'' The Exchange also proposed to update the definition of ''correspondence'' to ''any written (including electronic) communication distributed or made available by a Trading Permit Holder to 25 or fewer retail customers within any 30 calendar-day period.'' Finally, the Exchange proposed to define ''institutional communication'' to include written

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69535 (May 14, 2013), 78 FR 28262 (May 14, 2013) (''Notice'').

[4] *See* Securities Exchange Act Release No. 68650 (January 14, 2013), 78 FR 4182 (January 18, 2013) (Notice of Immediate Effectiveness of SR–FINRA–2013–001). The Exchange also proposed certain changes in Rule 9.21 to conform with aspects of the FINRA rule that predated the recent FINRA amendment and were not changed by that amendment.

(including electronic) communications that are distributed or made available only to institutional investors.

Second, the Exchange proposed to amend Rule 9.21(b), ''Approval by Registered Options Principal'', to replace the phrase ''advertisements, sales literature, and independently prepared reprints'' in Rule 9.21(b)(i) with the new proposed term, ''retail communications.''

Under proposed rule 9.21(b)(ii), correspondence would ''need not be approved by a Registered Options Principal prior to use'' but would be subject to the supervision and review requirements of Exchange Rule 9.8. The Exchange proposed to delete the requirement for principal approval of correspondence that is distributed to 25 or more existing retail customers within a 30 calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a TPH. Under the proposed Rule 9.21(b), such communications would be considered retail communications and therefore would be subject to the principal approval requirement. As such, the proposed change would not substantively change the scope of options communications that would require principal approval.

Third, the Exchange proposed to modify the required approvals of ''Institutional communications'' by adding that a TPH shall ''establish written procedures that are appropriate to its business, size, structure, and customers for review by a Registered Options Principal of institutional communications used by the Trading Permit Holder or TPH organization.''

Fourth, the Exchange proposed to amend Rule 9.21(c) to replace the phrase ''advertisements, sales literature, and independently prepared reprints'' with the new proposed term ''retail communications.'' The Exchange also proposed to further exempt options disclosure documents and prospectuses from Exchange review as other requirements apply to these documents under the Securities Act of 1933.

Fifth, the Exchange proposed to specify in Rule 9.21(d) that TPHs may not use any options communications that ''constitute a prospectus'' unless the communications meet the requirements of the Securities Act of 1933. Finally, the Exchange proposed to move and slightly modify Rule 9.21(d) to state that any statement made referring to ''potential opportunities or advantages presented by options'' must also be accompanied by a statement identifying the potential risks posed.

III. Discussion

As noted above, the Commission received no comments on the proposed rule change. The Commission has carefully reviewed the proposed rule change and finds that it is generally consistent with the Act and the rules and regulations thereunder applicable to the Exchange [5] and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires that the rules of a national securities exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Commission believes that the proposed rule change will help TPHs that are also members of FINRA to comply with their obligations regarding options communications by better aligning the Exchange's requirements with those of FINRA. In addition, the Commission believes that the proposed rule change will help protect investors from potentially false or misleading communications with the public distributed by Exchange TPHs.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [9] that the proposed rule change (SR–69535) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15224 Filed 6–25–13; 8:45 am]

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[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69806; File No. SR–ISE–2013–39]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Managed Data Access Service, on a Pilot Basis, for the Sale of a Number of Market Data Products Currently Offered by the Exchange

June 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to establish a pricing structure, on a pilot basis, called Managed Data Access Service for the sale of a number of real-time market data products currently offered by the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its Schedule of Fees to establish a pricing structure for a new data distribution model called Managed Data Access Service for the sale of a number of real-time market data products currently offered by the Exchange. With this proposed rule change, the Exchange proposes to establish Managed Data Access Service for the following real-time market data feeds, each of which is currently offered by the Exchange on a subscription basis: The ISE Real-time Depth of Market Raw Data Feed,[3] the ISE Order Feed,[4] the ISE Top Quote Feed and the ISE Spread Feed[5] (the ''ISE Data Feeds'').

With this proposed rule change, the Exchange seeks to further the distribution of the ISE Data Feeds.[6] The proposed new pricing and administrative option is in response to industry demand, as well as due to improvements in the contractual administration and the technology used to distribute market data. The Exchange already offers the ISE Data Feeds on a subscription basis and has determined to implement Managed Data Access Service for the ISE Data Feeds on a pilot basis, until November 30, 2013, to gauge the level of interest in this new pricing and distribution model. The Exchange will submit a proposed rule change at the end of the pilot period to either continue this new offering or to terminate it.

Managed Data Access Service provides an alternative delivery option for the ISE Data Feeds. Managed Data Access Service is any retransmission of the ISE Data Feeds by a Managed Data Access Distributor[7] where the Managed Data Access Distributor manages and monitors, but does not necessarily control, the information. Managed Data Access Service is a pricing and administrative option that will assess fees to Managed Data Access Distributors. Under this distribution model, Managed Data Access Distributors are required to monitor the delivery of the data in the Managed Data Access Service to their clients, the Managed Data Access Recipients.[8] The Managed Data Access Distributor must also agree to reformat, redisplay and/or alter the ISE Data Feeds prior to retransmission without affecting the integrity of the ISE Data Feeds and without rendering any of the feeds inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory.

In the past, retransmissions were considered to be an uncontrolled data product if the Managed Data Access Distributor did not control both the entitlements and the display of the information. Over the last several years, Managed Data Access Distributors have improved the technical delivery and monitoring capabilities of data therefore Managed Data Access Service is a response to an industry need to administer new types of technical deliveries and pricing options.

ISE notes that some Managed Data Access Distributors believe that Managed Data Access Service is a better controlled data feed product and as such should not be subject to the same rates as a data feed. However, Managed Data Access Distributors may only have contractual control over the data and may not be able to verify how Managed Data Access Recipients are actually using the data, at least without involvement of the Managed Data Access Recipient. The Exchange's proposal to offer Managed Data Access Service to Managed Data Access Distributors would assist in the management of the uncontrolled data product on behalf of their Managed Data Recipients by contractually restricting the data flow and monitoring the delivery. The Exchange will maintain contracts with Managed Data Access Recipients, who may be liable for any unauthorized use under the Managed Data Access Service. The proposed Managed Data Access Service for the ISE Data Feeds would allow Managed Data Access Distributors to deliver Managed Data Access Service to their clients and would allow Professional and Non-Professional[9] users to use the ISE Data Feeds for their own use.

The Exchange proposes to charge for Managed Data Access Service for the ISE Data Feeds, as follows:

- For the ISE Real-time Depth of Market Raw Data Feed:
  - $2,500 per month per Managed Data Access Distributor.
  - $750 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.
  - $50 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user.
  - $5 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Non-Professional use [sic].

A Managed Data Access Distributor for the ISE Real-time Depth of Market Raw Data Feed is subject to a minimum fee of $5,000 per month.

- For the ISE Top Quote Feed:
  - $1,500 per month per Managed Data Access Distributor.
  - $500 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data

[3] *See* Securities Exchange Act Release Nos. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2007–97); and 63324 (November 17, 2010), 75 FR 71475 (November 23, 2010) (SR–ISE–2010–103).

[4] *See* Securities Exchange Act Release No. 62399 (June 28, 2010), 75 FR 38587 (July 2, 2010) (SR–ISE–2010–34).

[5] *See* Securities Exchange Act Release No. 65002 (August 1, 2011), 76 FR 47630 (August 5, 2011) (SR–ISE–2011–50).

[6] The Exchange notes that a managed data solution is not a novel distribution model. ISE currently offers Managed Data Access Service for the ISE Implied Volatility and Greeks Feed, a real-time market data offering. *See* Securities Exchange Act Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (SR–ISE–2011–67). A number of other exchanges have adopted Managed Data Access Service to distribute their proprietary market data. *See e.g.* Securities Exchange Act Release Nos. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR–NASDAQ–2010–138); and 69182 (March 19, 2013), 78 FR 18378 (March 26, 2013) (SR–PHLX–2013–28).

[7] A Managed Data Access Distributor redistributes the ISE Data Feeds that permits [sic] access to the information in the ISE Data Feeds through a controlled device. A Managed Data Access Distributor can also redistribute a data feed solution to specific IP addresses, including an Application Programming Interface (API) or similar automated delivery solutions, with only limited entitlement controls (*e.g.,* usernames and/or passwords) to a recipient of the information.

[8] A Managed Data Access Recipient is a subscriber to the Managed Data Access Distributor who receives a reformatted data feed in a controlled device or at a specific IP address.

[9] In differentiating between Professional and Non-Professional subscribers, the Exchange proposes to apply the same criteria for qualification as a Non-Professional subscriber as the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation System Plan Participants use. Accordingly, a ''Non-Professional Subscriber'' is an authorized end-user of the ISE Data Feeds who is a natural person and who is neither: (a) Registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an ''investment advisor'' as that term is defined Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt. A ''Professional Subscriber'' is an authorized end-user of the ISE Data Feeds that has not qualified as a Non-Professional Subscriber.

Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.

○ $20 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users.

A Managed Data Access Distributor for the ISE Top Quote Feed is subject to a minimum fee of $3,000 per month.

• For the ISE Spread Feed:

○ $1,500 per month per Managed Data Access Distributor.

○ $500 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.

○ $25 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users.

A Managed Data Access Distributor for the ISE Spread Feed is subject to a minimum fee of $3,000 per month.

• For the ISE Order Feed:

○ $1,000 per month per Managed Data Access Distributor.

○ $350 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.

○ $10 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users.

A Managed Data Access Distributor for the ISE Order Feed is subject to a minimum fee of $2,000 per month.

The Exchange also proposes to adopt a multi-product discount for subscriptions to more than one data feed, much like what the Exchange currently offers to subscribers of the ISE Data Feeds. Specifically, subscription fees will be discounted by 10% for customers who subscribe to two data feeds and by 20% for customers who subscribe to three data feeds. Customers who subscribe to the ISE Real-time Depth of Market Raw Data Feed and ISE Top Quote Feed only pay for the ISE Real-time Depth of Market Raw Data Feed (because the ISE Top Quote Feed is embedded in the ISE Real-time Depth of Market Raw Data Feed) and such subscription thus counts as one feed for the purpose of the discount.

The Exchange notes that while the proposed Managed Data Access Service will produce inherent latency for customers, this proposed rule change will also lower the fee for current and potential future recipients of the ISE Data Feeds. Accordingly, the Exchange believes that the proposed rule change establishes a program that allows all Exchange members and Managed Data Access Distributors a practicable methodology to assess and receive Managed Data Access Service for the ISE Data Feeds, similar to services offered by other exchanges.

The Exchange has designated this proposed rule change to be operative on June 6, 2013.[10]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which ISE operates or controls.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [13] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all similarly-situated market participants, and therefore do not unreasonably discriminate among market participants.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility of offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[14]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barak Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission

[10] The same fees were operative on June 1, 2013 under SR–ISE–2013–35 which the Exchange withdrew and replaced with SR–ISE–2013–39 on June 6, 2013.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(8).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' [15]

ISE believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. The proposed fees are based on pricing conventions and distinctions that currently exist at ISE. These distinctions (e.g. Professional versus Non-Professional, internal versus external distribution, controlled versus uncontrolled datafeed) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal. ISE believes that the Managed Data Access Service promotes broader distribution of controlled data, although with some potential added latency while offering a fee reduction in the form of a pricing option which should result in lower fees for Subscribers. The Managed Data Access Service proposal is reasonable in that it offers a methodology to get Managed Data Access Service for the ISE Data Feeds for less. It is equitable in that it provides an opportunity for all distributors and subscribers, Professional and Non-Professional, to get Managed Data Access Service for the ISE Data Feeds without unfairly discriminating against any. ISE is constrained in pricing the Managed Data Access Service for the ISE Data Feeds by the availability to market participants of alternatives to purchasing ISE products. ISE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data. Thus, if ISE has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fees are entirely optional to all parties. Firms are not required to choose to purchase Managed Data Access Service for the ISE Data Feeds or to utilize any specific pricing alternative. ISE is not required to make Managed Data Access Service for the ISE Data Feeds available or to offer specific pricing alternatives for potential purchases. ISE continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers. Finally, as noted above, the Exchange proposes to adopt this new offering on a pilot basis, until November 30, 2013, at which time the Exchange will determine whether or not to continue this offering.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoaltion [sic] court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. ISE believes that a record may readily be established to demonstrate the competitive nature of the market in question.

The proposed rule change is, as described below, pro-competitive. The proposed rule change offers an overall fee reduction, which is, by its nature, pro-competitive. Moreover, there is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example [sic] of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without orders entered and trades executed, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease [sic], for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable. Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products.

''No one disputes that competition for order flow is 'fierce'.'' [16] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A

[15] *NetCoalition,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

[16] *NetCoalition,* at 24 [sic].

broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including numerous self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex (now NYSE MKT), NYSEArca, DirectEdge and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. ISE and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

Competition among platforms has driven ISE continually to improve its market data offerings and to cater to customers' data needs. For example, ISE has developed and maintained multiple delivery mechanisms that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. ISE offers front end applications such as its PrecISE Trade application which helps customers utilize data. ISE offers data via multiple

extranet providers, thereby helping to reduce network and total cost for its data products. Despite these enhancements and a dramatic increase in message traffic, ISE's fees for market data have, for the most part, remained flat. Moreover, platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for market data is significant and the Exchange believes that this proposal clearly evidences such competition. ISE is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. This pricing option is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. ISE continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with ISE or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for the proposed data is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and Rule 19b–4(f)(2) thereunder,[18] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2013–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–39 and should be submitted on or before July 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15226 Filed 6–25–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 8360]

60-Day Notice of Proposed Information Collection: Recording, Reporting, and Data Collection Requirements—Student and Exchange Visitor Information System (SEVIS)

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATE(S): The Department will accept comments from the public up to August 26, 2013.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Public Notice 8360'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: JExchanges@State.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, ECA/EC, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505, ATTN: Federal Register Notice Response.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection

listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, ECA/EC, SA–5, Floor 5, Department of State, 2200 C Street NW., Washington, DC 20522–0505, who may be reached on 202–632–3206 or at *JExchanges@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62 (DS–7000), the Exchange Visitor Program Application (Form DS–3036); and Update of Information on Exchange Visitor Program Sponsor (Form DS–3037).
- *OMB Control Number:* 1405–0147.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office for Private Sector Exchange, ECA/EC.
- *Form Number:* Forms DS–3036, DS–3037 and DS–7000.
- *Respondents:* U.S. government and public and private organizations wishing to become Department of State designated sponsors authorized to conduct exchange visitor programs, and Department of State designated sponsors.
- *Estimated Number of Respondents:* 191,675 (DS–3036—60; DS–3037—1,415; DS–7000—190,200).
- *Estimated Number of Responses:* 1,572,462 (DS–3036—60; DS–3037—2,830; DS–7000—1,569,302).
- *Average Hours per Response:* DS–3036—8 hours; DS–3037—20 minutes; DS–7000—45 minutes.
- *Total Estimated Burden:* 1,302,807 hours (DS–3036—480 hours; DS–3037—943 hours; DS–7000—1,301,384 hours).
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451, *et seq.*). Form DS–3036 has been revised to add a new certification for Responsible Officers and update Office addresses.

Methodology: Access to Forms DS–3036 and DS–3037 are found in the Student and Exchange Visitor Information System (SEVIS).

Dated: June 18, 2013.

Robin J. Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–15303 Filed 6–25–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8359]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Of Heaven and Earth: 500 Years of Italian Painting From Glasgow Museums''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Of Heaven and Earth: 500 Years of Italian Painting from Glasgow Museums,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Oklahoma City Museum of Art, Oklahoma City, Oklahoma, from on or about August 22, 2013, until on or about November 17, 2013, the Everson Museum of Art, Syracuse, New York, from on or about April 17, 2014, until on or about July 13, 2014, the Milwaukee Art Museum, Milwaukee, Wisconsin, from on or about October 3, 2014, until on or about January 4, 2015, the Santa Barbara Museum of Art, Santa Barbara, California, from on or about February 6, 2015, until on or about May 3, 2015 (under the title ''Botticelli, Titian and Beyond: Italian Masterpieces from Glasgow Museums''), and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 18, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–15302 Filed 6–25–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8351]

Notice of Meeting of Advisory Committee on International Law

Correction

In notice document 2013–13719, appearing on page 34702 in the issue of Monday, June 10, 2013, make the following correction:

In the third column, in the last paragraph, the entry ''(202–776–8442 or *lermanjb@state.gov.mailto:KillTP@state.gov*)'' is corrected to read ''(202–776–8442 or *lermanjb@state.gov mailto: KillTP@state.gov*)''.

[FR Doc. C1–2013–13719 Filed 6–25–13; 8:45 am]

BILLING CODE 1505–01–D

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed Collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as

required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer no later than *July 26, 2013.*

SUPPLEMENTARY INFORMATION:

Type of Request: Reauthorization.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 4000.

Estimated Total Annual Burden Hours: 8000.

Estimated Average Burden Hours per Response: 2.0.

Need For and Use of Information: TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information is collected via paper forms and/or electronic submissions and is used to assess the impact of the proposed project on TVA land or land rights and statutory TVA programs to determine if the project can be approved. Rules for implementation of TVA's Section 26a responsibilities are published in 18 CFR part 1304.

Michael T. Tallent,

Director, Enterprise Information Security & Policy.

[FR Doc. 2013–15206 Filed 6–25–13; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Safe Disposition of Life-Limited Aircraft Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection involves response to the Wendall H. Ford Investment and Reform Act for the 21st Century which requires that all persons who remove any life-limited aircraft part have a method to prevent the installation of that part after it has reached its life limit.

DATES: Written comments should be submitted by August 26, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0665.

Title: Safe Disposition of Life-Limited Aircraft Parts.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: 14 CFR Part 43 requires a record keeping system to be maintained that will aid aircraft operators in determining the status of the life-limited parts from inadvertently being installed that have reached their life limit. This action reduces the risk of life-limited parts being used beyond their life limits. This action also requires that manufacturers of life-limited parts provide marking instructions, when requested.

Respondents: Approximately 8,000 air carriers, repair stations, and mechanics.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 104,000 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 20, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–15315 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0097]

Pilot Program on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audit (PASA) for Sergio Tristan Maldonado doing business as Tristan Transfer (Tristan) with U.S. Department of Transportation (USDOT) number 2348928, which applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before July 8, 2013.

• **ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–

2011–0097 by any one of the following methods:

- *Federal eRulemaking Portal:* To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2011–0097'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on retrieving comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time and in the search box insert the docket number ''FMCSA–2011–0097'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice. You may also go to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Public Participation: The http://www.regulations.gov Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; *email marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007). Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on November 20, 2012. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed the PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 all titled (''Successful Pre-Authorization Safety Audit (PASA) Information'') set out additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *FMCSA Register Number:* The number assigned to the Mexico-domiciled motor carrier's operating authority as found in the FMCSA Register.

E. *PASA Initiated:* The date the PASA was initiated.

F. *PASA Completed:* The date the PASA was completed.

G. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the

PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., MX#—not yet assigned);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and Insurance public Web site at *http://li-public.fmcsa.dot.gov/,* and selecting FMCSA Register in the drop down menu.

I. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. *Passed Verification of 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item K above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

N. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; Driving and Parking Rules).

R. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal, if the inspection is passed successfully. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection at the time of the PASA decal as a result of a passed inspection.

T. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial

zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier that has completed the PASA.

TABLE 1

[Row number in Tables 2, 3 and 4 of the Appendix to today's notice]

Name of carrier	USDOT No.
Sergio Tristan Maldonado dba Tristan Transfer	2348928

TABLE 2—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION

[See also Tables 3 and 4]

Column A—row No.	Column B—name of carrier	Column C—US DOT No.	Column D—FMCSA register No.	Column E—PASA initiated	Column F—PASA completed	Column G—PASA results	Column H—FMCSA register	Column I—US drivers	Column J—US vehicles
1	Sergio Tristan Maldonado dba Tristan Transfer.	2348928	MX-None	11/13/2012	11/20/2012	Pass	6/17/2013	2	1

TABLE 3—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION

[See also Tables 2 and 4]

Column A—row No.	Column B—name of carrier	Column C—US DOT No.	Column D—FMCSA register No.	Column K—Passed verification of 5 elements (yes/no)	Column L—If no, which element failed	Column M—Passed phase 1 factor 1	Column N—passed phase 1 factor 2	Column O—passed phase 1 factor 3	Column P—passed phase 1 factor 4
1	Sergio Tristan Maldonado dba Tristan Transfer.	2348928	MX-None	Yes	None	Pass	Pass	Pass	Pass.

TABLE 4—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION

[See also Tables 2 and 3]

Column A—row No.	Column B—name of carrier	Column C—US DOT No.	Column D—FMCSA register No.	Column Q—passed phase I factor 5	Column R—passed phase I factor 6	Column S—number US vehicles inspected	Column T—number US vehicles issued CVSA decal	Column U—controlled substance collection	Column V—name of controlled substances and alcohol collection facility
1	Sergio Tristan Maldonado dba Tristan Transfer.	2348928	MX-None	N/A	Pass	3	3	MX	Laredo Urgent Care.

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* For carriers that participated in the Agency's demonstration project that ended in 2009, copies of the previous PASA and compliance review, if conducted, are also posted. All documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, is also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced Web site.

The Agency acknowledges that through the PASA process it was determined that Sergio Tristan Maldonado had an affiliation not identified in the original application. It was noted during the Agency's vetting and documented as an attachment to the PASA. Sergio Tristan Maldonado submitted for the record a letter explaining the relationship with a Mexico-domiciled motor carrier, Maria Higinia Tristan Maldonado dba Trujillo's Transfer (USDOT #1771021). Maria Higinia Tristan Maldonado is the sister of Sergio Tristan Maldonado. She currently employs him as a manager and operates the vehicle and employs the two drivers that Sergio Tristan Maldonado plans to use in the Pilot Program. During its vetting of the application and the PASA, FMCSA

confirmed that Sergio Tristan Maldonado did not establish or use the affiliated company to evade FMCSA regulation in continuing motor carrier operations, or fail to disclose the affiliation for the purpose of avoiding or hiding previous non-compliance or safety problems.

FMCSA reviewed the inspection records of the affiliated carrier, Maria Higinia Tristan Maldonado dba Trujillo's Transfer, an OP–2 carrier. This affiliated company has Safety Measurement System (SMS) scores that exceed the Behavioral Analysis and Safety Improvement Categories (BASICs) thresholds in two areas: Driver Fitness and Vehicle Maintenance. The Agency will be monitoring the safety of the affiliated carrier through SMS and will take action directly on the carriers, if appropriate.

Researching further, FMCSA reviewed a relationship that Maria Higinia Tristan Maldonado dba Trujillo's Transfer has with a Mexico-domiciled motor carrier, Maria Dolores Rosas Velazquez dba Transportes Cel; USDOT #2161024, because Trujillo's Transfer vehicles (including the vehicle Tristan Transfer plans to use in the Pilot Program) were used by Transportes Cel in the past. According to a statement provided by the Pilot Program applicant Sergio Tristan Maldonado, Transportes Cel operated these vehicles for a period of time under an agreement made between Trujillo's Transfer and Transportes Cel. Sergio Tristan Maldonado has no affiliation with Transportes Cel.

Two of the three vehicles submitted for planned operation in the Pilot Program, a 1995 U.S. manufactured Volvo, and a 1996 U.S. manufactured International, were deemed ineligible for participation as not able to meet EPA vehicle emissions standards required for the Pilot Program.

The two approved drivers passed the English language proficiency evaluation during the PASA.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued on: June 18, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–15330 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0181]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 24 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 26, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0181 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 24 individuals listed in this notice have recently requested such an

exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Wayne A. Beebe

Mr. Beebe, 52, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beebe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beebe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Idaho.

Craig W. Blackner

Mr. Blackner, 50, has had ITDM since 2010. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blackner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blackner meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Clifford R. Brown

Mr. Brown, 61, has had ITDM since 2008. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Daniel W. Eggebraaten

Mr. Eggebraaten, 72, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eggebraaten understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eggebraaten meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Peter J. Ferguson, Jr.

Mr. Ferguson, 45, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ferguson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ferguson meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

John L. Fischer

Mr. Fischer, 38, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fischer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fischer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Christopher E. Francklyn

Mr. Francklyn, 23, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Francklyn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Francklyn meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado.

Justin R. Freeman

Mr. Freeman, 25, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Freeman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Freeman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Idaho.

Douglas E. Gibbs

Mr. Gibbs, 45, has had ITDM since 2010. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gibbs understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gibbs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Clarence H. Holliman, Jr.

Mr. Holliman, 54, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holliman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holliman meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Steve P. Hoppe

Mr. Hoppe, 44, has had ITDM since 1998. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hoppe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hoppe meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Tracy S. Johnson

Mr. Johnson, 45, has had ITDM since 1997. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class E operator's license from Florida.

Chad D. Labonte

Mr. Labonte, 40, has had ITDM since 2011. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Labonte understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Labonte meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

Jason J. Marks

Mr. Marks, 34, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marks meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Louisiana.

Keith R. McKeever

Mr. McKeever, 57, has had ITDM since 1996. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McKeever understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McKeever meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Alberto Ramirez

Mr. Ramirez, 56, has had ITDM since 2011. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ramirez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ramirez meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

Donald G. Reed Sr.

Mr. Reed, 68, has had ITDM since 2009. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reed understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reed meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Brian S. Ruth

Mr. Ruth, 43, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting

in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ruth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ruth meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alaska.

Carl L. Saxton

Mr. Saxton, 60, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Saxton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Saxton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Michael R. Sheddan

Mr. Sheddan, 31, has had ITDM since 1999. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sheddan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sheddan meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Tennessee.

Ronald S. Smith

Mr. Smith, 54, has had ITDM since 1990. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Lawrence E. Starks, Sr.

Mr. Starks, 58, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Starks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Starks meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Lloyd K. Steinkamp

Mr. Steinkamp, 61, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Steinkamp understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steinkamp meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Calvin C. Wallingford

Mr. Wallingford, 45, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wallingford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wallingford meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0181 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0181 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: June 14, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–15251 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0020]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 26, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0020 using any of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 16 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Tyler A. Benjamin

Mr. Benjamin, age 29, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of

consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Benjamin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Benjamin meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

Larry K. Brindle

Mr. Brindle, 60, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brindle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brindle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Kansas.

James D. Damske

Mr. Damske, 41, has had ITDM since 1996. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Damske understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Damske meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Manuel M. Fabela, Jr.

Mr. Fabela, 38, has had ITDM since 2008. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fabela understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fabela meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Ryan L. Guffey

Mr. Guffey, 30, has had ITDM since 1993. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Guffey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Guffey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class D operator's license from Illinois.

Richard B. Harvey

Mr. Harvey, 51, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Harvey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harvey meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Donald F. Kurzejewski

Mr. Kurzejewski, 57, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kurzejewski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kurzejewski meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Joshua O. Lilly

Mr. Lilly, 26, has had ITDM since 2009. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lilly understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lilly meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Steven C. Lundberg

Mr. Lundberg, 50, has had ITDM since 2000. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lundberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lundberg meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in

2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Frank D. Marcou, Jr.

Mr. Marcou, 48, has had ITDM since 2003. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marcou understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marcou meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Vermont.

Roger D. Mott

Mr. Mott, 63, has had ITDM since 2007. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Bernard K. Nixon

Mr. Nixon, 53, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nixon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nixon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Thomas P. Olson

Mr. Olson, 67, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Olson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B operator's license from Wisconsin.

Steven T. Vanderburg

Mr. Vanderburg, 49, has had ITDM since 1975. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vanderburg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vanderburg meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from North Carolina.

John P. Washington

Mr. Washington, 68, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Washington understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Washington meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Christopher J. Wisner

Mr. Wisner, 44, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wisner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wisner meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Maryland.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0020 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0020 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: June 14, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–15252 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0032; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2005–2006 Mercedes Benz SLR Passenger Cars Manufactured Before September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2005–2006 Mercedes Benz SLR passenger cars manufactured before September 1, 2006 that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of 2005–2006 Mercedes Benz SLR passenger cars) and they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is July 26, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured

for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC. of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2005–2006 Mercedes Benz SLR passenger cars manufactured before September 1, 2006 are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2005–2006 Mercedes Benz SLR passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2005–2006 Mercedes Benz SLR passenger cars manufactured before September 1, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2005–2006 Mercedes Benz SLR passenger cars manufactured before September 1, 2006, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2005–2006 Mercedes Benz SLR passenger cars manufactured before September 1, 2006 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 110 *Tire Selection and Rims,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the instrument cluster with a U.S.-model component and reprogramming the vehicle computer to operate the necessary safety systems.

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment:* Replacement of the headlamps, side marker lamps, tail lamps (which incorporate side marker lamps), and high mounted stop lamps with U.S.-model components and installing the U.S.-model high-mounted stop lamp assembly.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles With a GVWR of 4,536 kilograms (10,000 pounds) or Less:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention:* Reprogramming the vehicle computer to activate the systems.

Standard No. 118 *Power-operated Window, Partition, And Roof Panel Systems:* Reprogramming the vehicle computer to conform to the standard if the vehicle does not already conform.

Standard No. 208 *Occupant Crash Protection:* Reprogramming the vehicle computer to activate the audible warning system. J.K. states that these vehicles are otherwise identical to the U.S.-market vehicles with respect to this standard.

Standard No. 301 *Fuel System Integrity:* Installation of a U.S.-model evaporative system with rollover and check valve.

Standard No. 401 *Interior Trunk Release:* Installation of U.S.-model interior trunk release components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: June 20, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–15280 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0074; Notice 2]

Chrysler Group, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition.

SUMMARY Chrysler Group, LLC (Chrysler),[1] has determined that certain model year (MY) 2011 Chrysler Town & Country and Dodge Grand Caravan multipurpose passenger vehicles (MPVs) manufactured between March 16, 2011 through March 22, 2011, do not fully comply with paragraph S4.3(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* Chrysler has filed an appropriate report dated May 3, 2011, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Chrysler has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this

[1] Chrysler Group, LLC is a vehicle manufacturer incorporated under the laws of the state of Delaware.

noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on February 15, 2012 in the **Federal Register** (77 FR 8944). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2011–0074''.

Contact Information: For further information on this decision contact Ms. Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0645, facsimile (202) 366–5307.

Vehicles Involved: Affected are approximately 729 MY 2011 Chrysler Town & Country and Dodge Grand Caravan MPVs manufactured between March 16, 2011 and March 22, 2011 and equipped with Yokohama size 225/65–R16 passenger car tires.

Summary of Chrysler's Analyses: Chrysler explains that the noncompliance is that the vehicle placards on the affected vehicles incorrectly identify the tire size as required by paragraph S4.3(d) of FMVSS No. 110.

Chrysler additionally explains that during the production of the subject vehicles there was a temporary shortage of Kumho size 235/60R16 passenger car tires. As a result, Yokahama size 225/65R16 tires and vehicle placard were substituted. On March 16, 2011, when the Kumbo tires were scheduled to be reintroduced, the vehicle placard was updated to reflect the tire change and placed on the subject vehicles. However, 729 vehicles that received the updated vehicle placard were fitted with the Yokahama tires instead of the Kumbo tires.

Chrysler stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The tire inflation pressure requirement for both tires is the same and that the recommended gross vehicle weight rating (GVWR) of the vehicles is not affected by the tire change. Chrysler also notes that the tire circumference for both tires is essentially the same and that the functions of the vehicle speedometer and odometer, the tire pressure monitoring system (TPMS), the antilock brake system (ABS) and the electronic stability program (ESP) are not affected by the 21 mm difference in circumference. In addition, Chrysler stated that the subject Kumbo and Yokahama tires provide equivalent performance when mounted on the subject vehicles.

2. While the non-compliant vehicle placards incorrectly state the tire size, they meet or exceed all other applicable Federal Motor Vehicle Safety Standards.

3. The noncompliance is inconsequential to motor vehicle safety because the noncompliant vehicle placards do not create an unsafe condition and all other labeling requirements have been met.

Chrysler also added that it believes that NHTSA has previously granted similar petitions.

In summation, Chrysler believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision: The intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and prevent overloading. NHTSA has confirmed that: The installed and labeled tires, including the spare, when inflated to the labeled recommended cold inflation pressure are appropriate to handle the vehicle maximum loads; the tire and loading information labels on subject vehicles are correct, except for the subject noncompliance; the vehicles are equipped with tires that have the complete tire size (225/65R16) molded into their sidewalls. Consequently, the subject noncompliance should not cause any unsafe conditions associated with determination of the correct tire inflation pressures or replacement tire selection for the subject vehicles.

Therefore, NHTSA agrees with Chrysler that in this specific case the incorrect tire size printed on the tire and loading information labels on the affixed vehicles does not have any adverse safety implications.

NHTSA is also not aware of any customer complaints or field reports relating to this issue and Chrysler stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In consideration of the foregoing, NHTSA has decided that Chrysler has met its burden of persuasion that the FMVSS No. 110 noncompliance in the vehicles identified in Chrysler's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Chrysler's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to approximately 729 vehicles that Chrysler no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Chrysler notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Issued on: June 20, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–15278 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0041; Notice 2]

Hyundai Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition.

SUMMARY: Hyundai America Technical Center, Inc., on behalf of Hyundai Motor Company (collectively referred to as ''Hyundai'') [1] has determined that certain model year (MY) 2011 and 2012 Hyundai Sonata Hybrid passenger cars, do not fully comply with paragraph § 4.1.5.5.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* Hyundai has filed an appropriate report dated March 8, 2012, pursuant to 49 CFR Part

[1] Hyundai America Technical Center, Inc. is a corporation registered under the laws of the state of Michigan.

573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Hyundai has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on April 13, 2012 in the **Federal Register** (77 FR 22386). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0041.''

Contact Information: For further information on this decision contact Mr. Lawrence Valvo, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5359, facsimile (202) 366–3081.

Vehicles Involved: Affected are approximately 14,728 MY 2011 and 2012 Hyundai Sonata Hybrid vehicles produced beginning on December 2, 2010 and shipped to dealers through March 7, 2012 that are equipped with a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point.

Background Requirement: Section 4.1.5.5 of FMVSS No. 208 specially states:

§ 4.1.5.5 Passenger cars manufactured on or after September 1, 2007.

§ 4.1.5.5.1 Except as provided in § 4.1.5.5.2, each passenger car shall have a Type 2 seat belt assembly that conforms to Standard No. 209 and to § 7.1 and § 7.2 of this standard at each rear designated seating position, except that side-facing designated seating positions shall have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and to § 7.1 and § 7.2 of this standard.

§ 4.1.5.5.2 Any inboard designated seating position on a seat for which the entire seat back can be folded (including the head restraints and any other part of the vehicle attached to the seat back) such that no part of the seat back extends above a horizontal plane located 250 mm above the highest SRP located on the seat may meet the requirements of § 4.1.5.5.1 by use of a belt incorporating a release mechanism that detaches both the lap and shoulder portion at either the upper or lower anchorage point, but not both. The means of detachment shall be a key or key-like object.

Summary of Hyundai's Analyses: Hyundai explains that the noncompliance is that the affected vehicles do not comply with § 4.1.5.5.2 because they are equipped with a non-folding rear seat back and a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point to allow improved assembly line procedures.

Hyundai believes that the installation of a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point in a vehicle with a non-folding rear seat back is inconsequential as it relates to motor vehicle safety. The seat belt assembly complies with FMVSS No. 208 requirements and with FMVSS No. 209 requirements, with the sole exception that it may be detached from the lower anchorage by use of a tool, such as a key or key-like object. If the rear seat back of the Sonata Hybrid vehicle was simply capable of being folded, which would have no effect upon seat belt performance; this detachable aspect would not result in a compliance issue.

Hyundai also stated its belief that it is clear from the intended difficulty in detaching the seat belt and the instructions contained in the vehicle owner's manual that the seat belt should not be detached. Further, in the Sonata Hybrid with a fixed rear seat back, there is no advantage or reason for the owner to detach the center rear seat belt from the lower anchorage.

Based on these arguments, Hyundai Motor Company does not believe that it is appropriate to conduct a recall campaign to replace the center rear seat belts in vehicles that have been delivered to customers.

Hyundai has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 208.

In summation, Hyundai believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision: NHTSA has reviewed and accepts Hyundai's analyses that the noncompliance is inconsequential to motor vehicle safety. Hyundai has provided sufficient documentation that the center rear seat belt does comply with all other safety performance requirements of FMVSS No. 208 and has met its burden of persuasion. Accordingly, Hyundai's petition is hereby granted, and Hyundai is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 14,728 vehicles that Hyundai no longer controlled at the time it determined that a noncompliance existed. However, the granting of this petition does not relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Hyundai notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Issued On: June 20, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–15281 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0045; Notice 2]

Hyundai-Kia America Technical Center, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition.

SUMMARY: Hyundai America Technical Center, Inc. on behalf of Hyundai Motor Company (collectively referred to as ''Hyundai'') [1] has determined that certain model year (MY) 2012 Hyundai Veracruz multipurpose passenger vehicles (MPV) manufactured August 9, 2011, through January 8, 2012, that were equipped with 7J x 18 wheel rims, do not fully comply with paragraph § 4.3.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/*

[1] Hyundai America Technical Center, Inc., is a corporation registered under the laws of the state of Michigan.

Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 pounds) or less. Hyundai has filed an appropriate report dated February 9, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Hyundai has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on June 7, 2012 in the **Federal Register** (77 FR 33807). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0045.''

Contact Information: For further information on this decision contact Ms. Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5307, facsimile (202) 366–5930.

Vehicles Involved: Affected are approximately 2,764 model year 2012 Hyundai Veracruz vehicles produced beginning on August 9, 2011, through January 8, 2012, that were equipped with 7J x 18 wheel rims at the assembly plant.

Background Requirement: Section § 4.3.3 of FMVSS No. 110 specially states:

§ 4.3.3 Additional labeling information for vehicles other than passenger cars. Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format

Truck Example—Suitable Tire-Rim Choice.

GVWR: 2,441 kilograms (5381 pounds).

GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.0 rims at 248 kPa (36 psi) cold single.

GAWR: Rear—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.00 rims, at 248 kPa (36 psi) cold single.

Summary of Hyundai's Analyses: Hyundai explains that the noncompliance is that the rim size information required by paragraph § 4.3.3 of FMVSS No. 110 was omitted from the certification labels that it installed on the affected vehicles.

Hyundai stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The missing rim size information on the certification label is inconsequential as it relates to motor vehicle safety, because this information is readily available to the vehicle owner through other sources that are required to be furnished with the vehicle. The rim size is marked on the rims and is included in the Owner's Manual, which is referenced as an information source by the tire placard which is positioned adjacent to the certification label on the ''B'' pillar. FMVSS No. 110 § 4.4.2(b) [2] requires that each rim be marked with the rim size designation. The affected vehicles are equipped with rims that are marked with the rim size and meet the requirements of FMVSS No. 110 § 4.4.2.

2. The tire placard required by FMVSS No. 110 § 4.3(d) requires that the tire size designation be provided for the tires installed at the time of the first purchase and FMVSS No. 110 § 4.3(f) requires that the placard state ''See Owner's Manual for Additional Information''. The affected vehicles are equipped with placards that meet the requirements of FMVSS No. 110 § 4.3.

Hyundai also stated that they are not aware of any notices, bulletins, or other communications that relate directly to the noncompliance sent to more than one manufacturer, distributor, dealer, or purchaser.

Hyundai has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 110.

In summation, Hyundai believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision: NHTSA has reviewed and accepts Hyundai's analyses that the noncompliance is inconsequential to motor vehicle safety. Hyundai has provided sufficient documentation that other than the labeling error, the vehicles comply with all other safety performance requirements of FMVSS No. 110. Since the missing information is provided in other locations, Hyundai has met its burden of persuasion. Accordingly, Hyundai's petition is hereby granted, and Hyundai is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the vehicles that Hyundai no longer controlled at the time it determined that a noncompliance existed. Therefore, this decision only applies to the approximately 2,764 vehicles that Hyundai no longer controlled at the time that it determined that the noncompliance existed. However, the granting of this petition does not relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Hyundai notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Issued on: June 20, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–15282 Filed 6–25–13; 8:45 am]

BILLING CODE 4910–59–P

[2] The citation that Hyundai referenced for rim size designation marking requirements in its petition, paragraph § 4.2.2, is incorrect. The correct citation is paragraph § 4.4.2.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 21, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 26, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0043.
Type of Review: Extension without change of a currently approved collection.
Title: Consent of Shareholder to Include Specific Amount in Gross Income.
Form: 972.
Abstract: Form 972 is filed by shareholders of corporations to elect to include an amount in gross income as a divided. The IRS uses Form 972 as a check to see if an amended return is filed to include the amount in income and to determine if the corporation claimed the correct amount.
Affected Public: Individuals or Households.
Estimated Annual Burden Hours: 385.

OMB Number: 1545–0044.
Type of Review: Extension without change of a currently approved collection.
Title: Corporation Claim for Deduction for Consent Dividends.
Form: 973.
Abstract: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.
Affected Public: Private Sector: Businesses and other for-profits.
Estimated Annual Burden Hours: 2,210.

OMB Number: 1545–0045.
Type of Review: Extension without change of a currently approved collection.
Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
Form: 976.
Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to eliminate all or a portion of a tax deficiency. The IRS uses Form 976 to determine if shareholders have included amounts in gross income.
Affected Public: Private Sector: Businesses and other for-profits.
Estimated Annual Burden Hours: 3,850.

OMB Number: 1545–0145.
Type of Review: Extension without change of a currently approved collection.
Title: Notice to Shareholder of Undistributed Long-Term Capital Gains.
Form: 2439.
Abstract: Form 2439 is sent by regulated investment companies and real estate investment trusts to report undistributed capital gains and the amount of tax paid on these gains designated under IRC section 852(b)(3)(D) or 857(b)(3)(D). The company, the trust, and the shareholder file copies of Form 2439 with IRS. IRS uses the information to check shareholder compliance.
Affected Public: Private Sector: Businesses and other for-profits.
Estimated Annual Burden Hours: 29,995.

OMB Number: 1545–0240.
Type of Review: Extension without change of a currently approved collection.
Title: Claim for Refund of Income Tax Return Preparer Penalties.
Form: 6118.
Abstract: Form 6118 is used by preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.
Affected Public: Individuals or Households.
Estimated Annual Burden Hours: 11,400.

OMB Number: 1545–0429.
Type of Review: Extension without change of a currently approved collection.
Title: Request for Copy of Tax Return.
Form: 4605.
Abstract: Title 26 USC 7513 allows for taxpayers to request a copy of a tax return. Form 4506 is used by a taxpayer to request a copy of a Federal tax form. The information provided will be used for research to locate the tax form and to ensure that the requester is the taxpayer or someone authorized by the taxpayer.
Affected Public: Individuals or Households.
Estimated Annual Burden Hours: 260,000.

OMB Number: 1545–0746.
Type of Review: Extension without change of a currently approved collection.
Title: LR–100–78 (Final) Creditability of Foreign Taxes.
Abstract: The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of section 1.901–2A(e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.
Affected Public: Private Sector: Businesses or other for-profits, farms.
Estimated Annual Burden Hours: 37.

OMB Number: 1545–0755.
Type of Review: Extension without change of a currently approved collection.
Title: TD 7959—Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.
Abstract: The election described in the attached justification converted an annual election to an election effective until revoked. The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.
Affected Public: Private Sector: Businesses and other for-profits.
Estimated Annual Burden Hours: 205.

OMB Number: 1545–0956.
Type of Review: Revision of a currently approved collection.
Title: Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.
Form: 5500–EZ.
Abstract: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Affected Public: Private Sector: Businesses and other for-profits.
Estimated Annual Burden Hours: 7,005,000.

OMB Number: 1545–1098.
Type of Review: Extension without change of a currently approved collection.
Title: Arbitrage Restrictions on Tax-Exempt Bonds TD 8418 Final (FI–91–86; FI–90–86; FI–90–91; and FI–1–90).

Abstract: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on non-purpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 8,550.

OMB Number: 1545–1224.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–112–88 (Final) Allocation and Apportionment of Deduction for State Income Taxes.

Abstract: This regulation provides guidance on when and how the deduction for state income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 1,000.

OMB Number: 1545–1452.

Type of Review: Extension without change of a currently approved collection.

Title: FI–43–94 (TD 8649—Final) Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions.

Abstract: Section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 5,000.

OMB Number: 1545–1455.

Type of Review: Extension without change of a currently approved collection.

Title: PS–80–93 (TD 8645—Final) Rules for Certain Rental Real Estate Activities.

Abstract: The regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations on Internal Revenue Code section 469.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 3,015.

OMB Number: 1545–1459.

Type of Review: Extension without change of a currently approved collection.

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

Form: 8498.

Abstract: This information relates to the approval of continuing professional education programs for the individuals enrolled to practice before the Internal Revenue Service (enrolled agents).

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 300.

OMB Number: 1545–1507.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8701—Treatment of Shareholders of Certain Passive Investment Companies.

Abstract: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders and transactions subject to PFIC taxation and to verify income inclusions, excess distributions and deferred tax amounts.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 100,000.

OMB Number: 1545–1534.

Type of Review: Extension without change of a currently approved collection.

Title: REG–252936–96 (TD 8780—Final) Rewards for Information Relating to Violations of Internal Revenue Laws.

Abstract: The regulations relate to rewards for information that results in the detection and punishment of violations of the Internal Revenue Laws.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 30,000.

OMB Number: 1545–1551.

Type of Review: Extension without change of a currently approved collection.

Title: Changes in Methods of Accounting (RP 2011–14).

Abstract: This revenue procedure (2011–14) provides the procedures by which a taxpayer may obtain automatic consent for a change in method of accounting described in the Appendix of this revenue procedure. This revenue procedure amplifies, clarifies, modifies, and supersedes Rev. Proc. 2008–52, 2008–2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009–39, 2009–38 I.R.B. 371, and provides additional changes in methods of accounting for which a taxpayer may obtain automatic consent.

Affected Public: Private Sector: Businesses and other for-profits, Not-for-profit institutions, Farms.

Estimated Annual Burden Hours: 15,359.

OMB Number: 1545–1555.

Type of Review: Extension without change of a currently approved collection.

Title: REG–115795–97 (Final) General Rules for Making and Maintaining Qualified Electing Fund Elections.

Abstract: The regulations provide rules for making section 1295 elections and satisfying annual reporting requirements for such elections, revoking section 1295 elections, and making retroactive section 1295 elections.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 623.

OMB Number: 1545–1556.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8786—Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Source of Income Derived From Certain Purchases from a Corporation Electing Section 936.

Abstract: The information requested in section 1.863–3(f)(6) is necessary for the Service to audit taxpayers' return to ensure taxpayers are properly determining the source of their income.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 500.

OMB Number: 1545–1559.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedures 98–46 and 97–44, LIFO Conformity Requirement.

Abstract: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of section 472(c) or (e)(2). Revenue Procedure 98–46 modifies Revenue Procedure 97–44 by allowing medium- and heavy-duty truck dealers to take

advantage of the favorable relief provided in Revenue Procedure 97–44.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 100,000.

OMB Number: 1545–1583.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209322–82 (TD 8841—Final), Return of Partnership Income.

Abstract: Information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits from that taxpayer's interest in the partnership.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1545–1700.

Type of Review: Extension without change of a currently approved collection.

Title: Qualified Subchapter S Subsidiary Election.

Form: 8869.

Abstract: Effective for tax years beginning after December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). Form 8869 is used to make this election.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 40,750.

OMB Number: 1545–1704.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 200–41—Change in Minimum Funding Method.

Abstract: This revenue procedure provides a mechanism whereby a plan sponsor or plan administrator may obtain a determination from the Internal Revenue Service that its proposed change in the method of funding its pension plan(s) meets the standards of section 412 of the Internal Revenue Code.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 5,400.

OMB Number: 1545–1706.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9315—Section 1503(d) Closing Agreement Requests.

Abstract: Revenue Procedure 2000–42 informs taxpayers of the information they must submit to request a closing agreement under Reg. S1.1503–2(g)(2)(iv)(B)(2)(i) to prevent the recapture of dual consolidated losses (DCLs) upon the occurrence of certain triggering events. TD 9315 contains regulations under section 1503(d) of the Internal Revenue Code (Code) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, the loss does not offset the income of any foreign corporation. Similar rules apply to losses of separate units of domestic corporations. These regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 2,000.

OMB Number: 1545–1718.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106030–98 (TD 9305—Final) Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income.

Abstract: This document contains regulations under section 863(d) governing the source of income from certain space and ocean activities. It also contains regulations under section 863(a), (d), and (e) governing the source of income from certain communications activities. In addition, this document contains final regulations under section 863(a) and (b), amending the regulations in § 1.863–3 to conform those regulations to these final regulations. These regulations primarily affect persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). The regulations also affect persons who derive income from transmission of communications.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 1,250.

OMB Number: 1545–1817.

Type of Review: Extension without change of a currently approved collection.

Title: Application for United States Residency Certification.

Form: 8802.

Abstract: All requests for U.S. residency certification must be received on Form 8802, Application for United States Residency Certification. This application must be sent to the Philadelphia Service Center. As proof of residency in the United States and of entitlement to the benefits of a tax treaty, U.S. treaty partner countries require a U.S. Government certification that you are a U.S. citizen, U.S. corporation, U.S. partnership, or resident of the United States for purposes of taxation.

Affected Public: Individual or Households.

Estimated Annual Burden Hours: 363,000.

OMB Number: 1545–1966.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9263 (Final) Income Attributable to Domestic Production Activities.

Abstract: This document contains final regulations concerning the deduction for income attributable to domestic production activities under section 199 of the Internal Revenue Code. Section 199 was enacted as part of the American Jobs Creation Act of 2004 (Act). The regulations will affect taxpayers engaged in certain domestic production activities.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 9,000.

OMB Number: 1545–1981.

Type of Review: Revision of a currently approved collection.

Title: Alternative Fuel Vehicle Refueling Property Credit.

Form: 8911.

Abstract: IRC section 30C allows a credit for alternative fuel vehicle refueling property. Form 8911 will be used by taxpayers to claim the credit.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 3,420,759.

OMB Number: 1545–2028.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2008–33—Fuel Cell Motor Vehicle Credit.

Abstract: This notice sets forth interim guidance, pending the issuance of regulations, relating to the new fuel cell motor vehicle credit under § 30B(a)(1) and (b) of the Internal Revenue Code.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 200.

OMB Number: 1545–2031.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9365—Railroad Track Maintenance Credit.

Abstract: This document contains regulations that provide rules for claiming the railroad track maintenance credit under section 45G of the Internal Revenue Code for qualified railroad track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers during the taxable year. These regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,375.

OMB Number: 1545–2156.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2010–13, Disclosure of Activities Grouped under Section 469.

Abstract: This revenue procedure requires taxpayers to report to the Internal Revenue Service their groupings and regroupings of activities and the addition of specific activities within their existing groupings of activities for purposes of section 469 of the Internal Revenue Code and § 1.469–4 of the Income Tax Regulations.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 39,000.

OMB Number: 1545–2159.

Type of Review: Extension without change of a currently approved collection.

Title: Notice Concerning Fiduciary Relationship of Financial Institution.

Form: 56–F.

Abstract: The filing of Form 56–F by a fiduciary (FDIC or other federal agency acting as a receiver or conservator of a failed financial institution (bank or thrift) gives the IRS the necessary information to submit send letters, notices, and notices of tax liability to the federal fiduciary now in charge of the financial institution rather than sending the notice, etc. to the institution's last known address.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 997.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–15263 Filed 6–25–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL DEPOSIT INSURANCE CORPORATION

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities; Information Collection Renewal; Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Federal Deposit Insurance Corporation (FDIC); and National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The OCC, FDIC, and NCUA (the Agencies), are soliciting public comment on the renewal of a collection of information by the Agencies. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

The Agencies are soliciting comment concerning renewal of their information collection titled, ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.''

DATES: Comments must be received by August 26, 2013.

ADDRESSES:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0246, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FDIC: Interested parties are invited to submit written comments. All comments should refer to the name of the collection, ''Reverse Mortgage Products Guidance.'' Comments may be submitted by any of the following methods:

- *http://www.fdic.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202) 898–3877, Counsel, Federal Deposit Insurance Corporation, NYA–5046, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Reverse Mortgage Products Guidance, '' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGC Mail @ncua.gov*.

Additionally, please send a copy of your comments by mail to: OMB Desk Officer, 1557–0246; 3064–0176; 3133–0187, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: *OCC:* You can request additional information or a copy of the information collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mailstop 9W–11, Washington, DC 20219.

FDIC: Michael R. Evans, Fair Lending Specialist, Compliance Policy Section, Division of Supervision and Consumer Protection, (202) 898–6611; or Richard M. Schwartz, Counsel, (202) 898–7424, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

NCUA: Tracy Sumpter, Paperwork Clearance Officer, 703–518–6444, Office of the Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Agencies are publishing this notice of their intent to seek OMB PRA renewal for the information collection requirements contained in their guidance entitled ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.''

With respect to renewal of this collection of information, the Agencies invite comments on:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

The Agencies are proposing to extend OMB approval of the following information collection:

Title of Information Collection: Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.

OMB Control Numbers: 1557–0246; 3064–0176; and 3133–0187.

Abstract: On December 16, 2009, the OCC, FDIC, FRB and NCUA sought comment on the guidance,[1] and they issued it in final form on August 17, 2010.[2] The guidance focused on the need to provide adequate information to consumers about reverse mortgage products; to provide qualified independent counseling to consumers considering these products; and to avoid potential conflicts of interest. It also addressed related policies, procedures, internal controls, and third party risk management.

Prior to the effective date of the final guidance, the Agencies obtained PRA approval from OMB for the information collection requirements contained therein. These information collection requirements included implementation of policies and procedures, training, and program maintenance. The requirements are outlined below:

- Institutions offering reverse mortgages should have written policies and procedures that prohibit the practice of directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf.
- Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage.
- Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.
- Training should be designed so that relevant lending personnel are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner.

The Agencies are now seeking renewal of the PRA approval granted by OMB for these information collection requirements.

Affected Public:

OCC: National banks, Federal savings associations, their subsidiaries, and Federal branches or agencies of foreign banks.

FDIC: Insured state nonmember banks.

NCUA: Federally-insured credit unions.

Type of Review: Regular.

Estimated Burden:

OCC:

Number of respondents: 97.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 4,656 hours.

FDIC:

Number of respondents: 48.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 2,304 hours.

NCUA:

Number of respondents: 85.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 4,080 hours.

Dated: June 14, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

Dated at Washington, DC, this 3rd day of June, 2013.

[1] 74 FR 66652.

[2] 75 FR 50801.

Federal Deposit Insurance Corporation.

Robert E Feldman,

Executive Secretary.

Dated: June 20, 2013.

By the National Credit Union Administration.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2013–15293 Filed 6–25–13; 8:45 am]

BILLING CODE 4810–33–P– 6714–01–P; 7535–01–P;

DEPARTMENT OF THE TREASURY

United States Mint

Price for the 2013 Girl Scouts of the USA Young Collector Set

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing a price of $54.95 for the 2013 Girl Scouts of the USA Young Collector Set.

FOR FURTHER INFORMATION CONTACT: Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701; Pub. L. 111–86, sec. 6.

Dated: June 20, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2013–15269 Filed 6–25–13; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0736]

Agency Information Collection (Authorization To Disclose Personal Beneficiary/Claimant Information to a Third Party) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 26, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0736'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492, Fax (202) 632–7634 or via email at *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0736.''

SUPPLEMENTARY INFORMATION:

Title: Authorization to Disclose Personal Beneficiary/Claimant Information to a Third Party, VA Form 21–0845.

OMB Control Number: 2900–0736.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0845 will be used to release information in the following circumstances: where the individual identifies the particular information and consents to its use; for the purpose for which it was collected or a consistent purpose (i.e. a purpose which the individual might have reasonably expected).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 26, 2013, at pages 13158–13159.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: June 21, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–15231 Filed 6–25–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0524]

Agency Information Collection (VA Police Officer Pre-Employment Screening Checklist) Activities Under OMB Review

AGENCY: Office of Policy, Planning and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Policy, Planning and Preparedness (OPP&P), Department of Veterans Affairs, will submit the collection of information as abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 26, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0524'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492, Fax (202) 632–7634 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0524.''

SUPPLEMENTARY INFORMATION:

Title: VA Police Officer Pre-Employment Screening Checklist.

OMB Control Number: 2900–0524.

Type of Review: Extension of a currently approved collection.

Abstract: VA personnel use the form to document pre-employment history and conduct background checks on applicants seeking employment as VA police officers. VA will use the data collected to determine the applicant's qualification and suitability to be hired as a VA police officer.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published on March 26, 2013, at page 18425.

Affected Public: State, Local, or Tribal Government.

Estimated Total Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,500.

Dated: June 21, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affiars.

[FR Doc. 2013–15232 Filed 6–25–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 123 June 26, 2013

Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Test Procedures for Electric Motors; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2012–BT–TP–0043]

RIN 1904–AC89

Energy Conservation Program: Test Procedures for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to clarify aspects of certain U.S. Department of Energy (DOE) energy efficiency regulations related to electric motors. DOE is considering establishing definitions, specifying testing set-up procedures necessary to test, and extending DOE's existing test procedures for electric motors to certain electric motor types that have not been regulated by DOE. These actions are being proposed to clarify the scope of regulatory coverage for electric motors and to ensure accurate and consistent measurements when determining the energy efficiency of various types of electric motors. This notice seeks comment on this proposal and requests comments, data, and other information to assist DOE in deciding whether to finalize or modify these provisions.

DATES: DOE will hold a public meeting on Tuesday, July 16, 2013, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this NOPR before and after the public meeting, but no later than September 9, 2013. See section V, ''Public Participation.'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. For detailed information regarding attendance and participation at the public meeting, see section V, ''Public Participation.''

Any comments submitted must identify the NOPR for Test Procedures for Electric Motors, and provide docket number EERE–2012–BT–TP–0043 and/or regulation identifier number (RIN) number 1904–AC89. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ElectricMotors2012TP0043@ee.doe.gov.* Include the docket number EERE–2012–BT–TP–0043 and/or RIN 1904–AC89 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation.''

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/74.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Email: *medium_electric_motors@ee.doe.gov*

Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–5709. Email: *Ami.Grace-Tardy@hq.doe.gov.*

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I. Introduction

A. Authority

Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6291, *et*

seq., (''EPCA'' or ''the Act'') sets forth a variety of provisions designed to improve the energy efficiency of products and commercial equipment. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA 2012), Public Law 112–210 (December 18, 2012)). Part C of Title III (42 U.S.C. 6311–6317), which was subsequently redesignated as Part A–1 for editorial reasons, establishes an energy conservation program for certain industrial equipment, which includes electric motors, the subject of today's notice. (42 U.S.C. 6311(1)(A), 6313(b))

B. Background

In the Energy Policy Act of 1992, Public Law 102–486 (October 24, 1992) (EPACT 1992), Congress amended EPCA to establish energy conservation standards, test procedures, compliance certification, and labeling requirements for certain electric motors. (When used in context, the term ''motor'' refers to ''electric motor'' in this document.) On October 5, 1999, DOE published in the **Federal Register**, a final rule to implement these requirements. 64 FR 54114. In 2007, section 313 of the Energy Independence and Security Act (EISA 2007) amended EPCA by: (1) Striking the definition of ''electric motor,'' (2) setting forth definitions for ''general purpose electric motor (subtype I)'' and ''general purpose electric motor (subtype II),'' and (3) prescribing energy conservation standards for ''general purpose electric motors (subtype I),'' ''general purpose electric motors (subtype II), ''fire pump electric motors,'' and ''NEMA Design B general purpose electric motors'' with a power rating of more than 200 horsepower but not greater than 500 horsepower. (42 U.S.C. 6311(13), 6313(b)). Consequently, on March 23, 2009, DOE updated the corresponding regulations at 10 CFR part 431 with the new definitions and energy conservation standards. 74 FR 12058. On December 22, 2008, DOE proposed to update the test procedures under 10 CFR part 431 both for electric motors and small electric motors. 73 FR 78220. DOE finalized key provisions related to small electric motor testing in a 2009 final rule at 74 FR 32059 (July 7, 2009), and further updated test procedures for electric motors and small electric motors at 77 FR 26608 (May 4, 2012).

Today's notice of proposed rulemaking (NOPR) focuses on electric motors and proposes to add the aforementioned definitions and additional testing set-up instructions and clarifications to the current test procedures under subpart B of 10 CFR part 431 for a wider variety of electric motor types than currently regulated. Additionally, DOE is proposing to extend the applicability of DOE's existing electric motor test procedure in 10 CFR part 431 to the wider scope of currently unregulated motors. DOE is proposing such amendments because the additional testing set-up instructions and clarifications are designed to help manufacturers of certain types of motors prepare them for testing under the applicable test procedure. The proposed steps are intended to enable a manufacturer to consistently measure the losses and determine the efficiency of a wider variety of motors, and potentially facilitate the application of energy conservation standards to a wider array of motors than what is currently covered under 10 CFR part 431.[1] In addition, DOE is considering prescribing standards for some electric motors addressed in this notice through a parallel energy conservation standards-related activity. See 77 FR 43015 (July 23, 2012). To ensure consistency between the two rulemakings, this test procedure NOPR addresses scope of coverage and test procedure issues raised in response to DOE's current electric motors energy conservation standards rulemaking. See 76 FR 17577 (March 30, 2011); 77 FR 43015 (July 23, 2012). Finally, to provide regulatory clarity and consistency with existing regulations, today's proposed rule also defines NEMA Design A motors, NEMA Design C motors, International Electrotechnical Commission (IEC) Design H motors and IEC Design N motors, which are covered under subpart B of 10 CFR part 431.

By way of background, DOE notes that section 343(a)(5)(A) of EPCA, 42 U.S.C. 6314(a)(5)(A), initially required that the test procedures to determine electric motor efficiency shall be those procedures specified in two documents: National Electrical Manufacturers Association (NEMA) Standards Publication MG1–1987 [2] and Institute of Electrical and Electronics Engineers (IEEE) Standard 112 Test Method B for motor efficiency, as in effect on the date of enactment of EPACT 1992. Section 343(a)(5)(B)–(C) of EPCA, 42 U.S.C. 6314(a)(5)(B)–(C), provides in part that if the NEMA- and IEEE-developed test procedures are amended, the Secretary of Energy shall so amend the test procedures under 10 CFR part 431, unless the Secretary determines, by rule, that the amended industry procedures would not meet the requirements for test procedures to produce results that reflect energy efficiency, energy use, and estimated operating costs of the tested motor, or would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)–(3), (a)(5)(B)) Subsequently, as newer versions of the NEMA and IEEE test procedures for electric motors were published and used by industry, DOE updated 10 CFR part 431. For example, see 64 FR 54114 (October 5, 1999) that incorporated by reference into 10 CFR part 431 applicable provisions of NEMA Standards Publication MG1–1993 and IEEE Standard 112–1996, and codified them at 10 CFR 431.16 and appendix B to subpart B of 10 CFR part 431. DOE also added the equivalent test procedure—Canadian Standards Association (CSA) CAN/CSA C390–93, ''Energy Efficiency Test Methods for Three-Phase Induction Motors,'' because NEMA added this procedure to its Standards Publication, MG1, when it was revised and updated in 1993. See 61 FR 60440, 60446 (November 27, 1996).

On May 4, 2012, DOE incorporated by reference the updated versions of the above test procedures: NEMA MG1–2009, IEEE 112–2004, and CAN/CSA C390–10. 77 FR 26608, 26638 (the ''2012 final test procedure.'') DOE made these updates to ensure consistency between 10 CFR part 431 and current industry procedures and related practices. Since publication of the 2012 final test procedure, NEMA Standards Publication MG1 has been updated to MG1–2011. The text of the sections and paragraphs of NEMA MG1–2009, which is incorporated by reference under 10 CFR part 431.15, is identical to the text of the relevant sections and paragraphs of NEMA MG1–2011. The substance of those NEMA MG1–2009 sections and paragraphs incorporated by reference into subpart B of 10 CFR part 431 were subjected to public notice and comment during the 2012 test procedure rulemaking. DOE addressed its reasons for incorporating the MG1–2009 text into its regulations in its May 2012 final

[1] EPCA, as amended by EPACT 1992, had previously defined an ''electric motor'' as any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987. (42 U.S.C. 6311(13)(A) (1992)) Through subsequent amendments to EPCA made by EISA 2007, Congress removed this definition and added language denoting two new subtypes of general purpose electric motors. (See 42 U.S.C. 6311(13)(A)–(B) (2012)).

[2] NEMA MG1 does not contain the actual methods and calculations needed to perform an energy efficiency test but, rather, refers the reader to the proper industry methodologies in IEEE Standard 112 and CSA C390–10.

rule. See 77 FR at 26616–26617. For all the above reasons, DOE has preliminarily chosen not to update its regulations with NEMA MG1–2011, but is accepting public comment on this preliminary decision.

II. Summary of Notice of Proposed Rulemaking

In this NOPR, DOE proposes to:

(1) Define a variety of electric motor configurations (i.e., types) that are currently covered under 10 CFR 431.25 but are not currently defined under 10 CFR 431.12;

(2) Define a variety of electric motor configurations (i.e., types) that are not currently covered under 10 CFR 431.25 and are not currently defined under 10 CFR 431.12; and

(3) Clarify the necessary testing ''set-up'' procedures to facilitate the testing of the currently not covered motor types under IEEE Standard 112 (Test Method B) or CSA Standard C390–10.

Today's NOPR was precipitated by DOE's ongoing electric motors standards rulemaking. DOE published its ''Framework Document for Commercial and Industrial Electric Motors'' (the ''2010 framework document'') (75 FR 59657) on September 28, 2010. Public comments filed in response urged DOE to consider regulating the efficiency of certain definite and special purpose motors. DOE, in turn, published a request for information regarding definite and special purpose motors (the ''March 2011 RFI''). See 76 FR 17577 (March 30, 2011). DOE is considering whether to propose expanding the scope of what its electric motor standards regulate to include all continuous duty, single speed, squirrel-cage, polyphase alternating-current, induction motors, with some narrowly defined exemptions. See 77 FR 43015 (July 23, 2012). Today's NOPR addresses and solicits comment on test procedure issues arising from potentially expanding the scope of DOE's energy efficiency requirements to include certain motor types that are not currently required to meet energy conservation standards. In particular, today's proposal includes definitions for those motor types that DOE may consider regulating and those types that DOE is not considering regulating at this time. DOE is coordinating today's NOPR with a parallel electric motor energy conservation standards rulemaking. To the extent possible, DOE will consider all comments submitted in response to the electric motors test procedure or standards rulemaking in connection with both activities.

In addition to proposing to include new definitions, today's notice proposes to add certain steps to the applicable test procedures contained in appendix B to subpart B of 10 CFR part 431, to accommodate setting those motors up for testing that DOE is considering regulating. Because the proposed amendments are strictly limited to those steps necessary to facilitate testing under the currently incorporated test procedures, DOE does not anticipate that the proposal would affect the actual measurement of losses and the subsequent determination of efficiency for any of the electric motors within the scope of today's proposed rulemaking.

The proposed revisions are summarized in the table below and addressed in detail in the following sections. Note that all citations to various sections of 10 CFR part 431 throughout this preamble refer to the current version of 10 CFR part 431. The proposed regulatory text follows the preamble to this notice. DOE seeks comments from interested parties on each of the proposed revisions.

TABLE II–1—SUMMARY OF CHANGES PROPOSED IN THIS NOPR AND AFFECTED SECTIONS OF 10 CFR PART 431

Existing section in 10 CFR part 431	Summary of proposed modifications
Section 431.12—Definitions	• Adds new definitions for: ○ Air-over electric motor. ○ Component set. ○ Definite-purpose inverter-fed electric motor. ○ Electric motor with moisture resistant windings. ○ Electric motor with sealed windings. ○ IEC Design H motor. ○ IEC Design N motor. ○ Immersible electric motor. ○ Integral brake electric motor. ○ Inverter-capable electric motor. ○ Liquid-cooled electric motor. ○ NEMA Design A motor. ○ NEMA Design C motor. ○ Non-integral brake electrical motor. ○ Partial electric motor. ○ Submersible electric motor. ○ Totally enclosed non-ventilated (TENV) electric motor.
Appendix B to Subpart B—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors.	• Updates test procedure set-up methods for: ○ Close-coupled pump electric motors and electric motors with single or double shaft extensions of non-standard dimensions or additions. ○ Electric motors with non-standard endshields or flanges. ○ Immersible electric motors and electric motors with contact seals. ○ Integral brake electric motors. ○ Non-integral brake electric motors. ○ Partial electric motors. ○ Vertical electric motors and electric motors with bearings incapable of horizontal operation. ○ Close-coupled pump electric motors.

DOE developed today's proposal after considering public input, including written comments, from a wide variety of interested parties. All commenters, along with their corresponding abbreviations and affiliation, are listed in Table II.2 below. The issues raised by these commenters are addressed in the discussions that follow.[3]

TABLE II–2—SUMMARY OF NOPR COMMENTERS

Company or organization	Abbreviation	Affiliation
Appliance Standards Awareness Project	ASAP	Energy Efficiency Advocate.
Baldor Electric Co.	Baldor	Manufacturer.
Copper Development Association	CDA	Trade Association.
Motor Coalition *	MC	Energy Efficiency Advocates, Trade Associations, Manufacturers.
National Electrical Manufacturers Association	NEMA	Trade Association.

* The members of the Motor Coalition include: National Electrical Manufacturers Association, American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Alliance to Save Energy, Earthjustice, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, Northeast Energy Efficiency Partnerships, and Northwest Power and Conservation Council.

III. Discussion

A. Proposed Effective Dates for the Amended Test Procedures

If adopted, the proposed amendments would become effective 30 days after the publication of the final rule. As previously explained, today's proposal would primarily add a new section to DOE's test procedure with the steps that the manufacturers of certain types of special and definite purpose electric motors would need to take before testing a motor. Because these test procedure changes would add only a new section to the existing test procedure for motor types that are not currently regulated (i.e., special and definite purpose motors), manufacturers of motors currently covered by DOE regulations (i.e., general purpose electric motors (subtype I and subtype II), including fire pump electric motors and NEMA Design B motors with a power rating of more than 200 horsepower but not greater than 500 horsepower) can continue to use the current test procedure until 180 days after publication of the final rule. At 180 days after publication of the final rule, both manufacturers of currently regulated motors and manufacturers of special and definite purpose motors for which definitions or testing set-up procedures are proposed in this rule may not make any representations regarding energy use or the cost of energy use for all electric motors addressed in today's rulemaking unless such representations are based on the results of testing, or calculations from a substantiated alternative efficiency determination method (AEDM), that reflect values of efficiency that would be obtained through testing in accordance with the amended test procedures. In addition, 180 days after publication of the final rule, both manufacturers of currently regulated motors and manufacturers of special and definite purpose motors for which definitions or testing set-up procedures are provided would be required to comply with and use the amended test procedures to determine if the covered electric motor types they manufacture comply with the applicable energy conservation standards.[4] See 42 U.S.C. 6314(d).

B. Expanding the Scope of Coverage of Energy Conservation Standards

DOE has the authority to set energy conservation standards for a wider range of electric motors than those classified as general purpose electric motors (e.g., definite or special purpose motors). The EPACT 1992 amendments to EPCA had defined ''electric motor'' to include a certain type of ''general purpose'' motor that Congress would eventually classify as a general purpose electric motor (subtype I). (42 U.S.C. 6311(13)(A) (1992)) Those amendments also defined several other types of motors, including definite purpose motors and special purpose motors. (See 42 U.S.C. 6311(13)(C) and (D) (1992)) EPACT 1992 set energy conservation standards for ''electric motors'' (i.e., general purpose electric motors (subtype I)) and explicitly stated that the standards did not apply to definite purpose or special purpose motors.[5] (42 U.S.C. 6313(b)(1)) (1992)) EISA 2007 struck the narrow EPACT 1992 definition for ''electric motor'' and replaced it with the heading ''Electric motors.'' As a result of these changes, both definite and special purpose motors fell under the broad heading of ''Electric motors'' that previously only applied to ''general purpose'' motors. While EISA 2007 set specific standards for general purpose electric motors, it did not explicitly apply these new requirements to definite or special purpose motors. (See generally 42 U.S.C. 6313(b) (2012))

Although DOE believes that EPCA, as amended through EISA 2007, provides sufficient statutory authority for the regulation of special purpose and definite purpose motors as ''electric motors,'' DOE notes it has additional authority provided under section 10 of AEMTCA (to be codified at 42 U.S.C. 6311(2)(B)) to generally regulate ''other motors'' as covered ''industrial equipment.'' Therefore, even if special and definite purpose motors were not ''electric motors,'' special and definite purpose motors would be considered as ''other motors'' that EPCA already treats as covered industrial equipment.[6]

[3] As comments have not yet been submitted for this test procedure rulemaking, all comments cited in this NOPR can be found in the Electric Motors Standards rulemaking docket with the number EERE–2010–BT–STD–0027.

[4] DOE acknowledges that there are no current energy conservation standards for the majority of the motor types covered in today's proposed rule. If DOE establishes standards for these motor types, manufacturers will be required to use the proposed test procedure to certify compliance with these standards.

[5] For the most part, DOE understands that a fire pump electric motor is a NEMA Design B motor, except it does not have a thermal limit switch that would otherwise preclude multiple starts. In other words, a NEMA Design B electric motor has a thermal limit switch that protects the motor, whereas a fire pump electric motor does not have such a thermal limit switch to ensure that the motor will start and operate to pump water to extinguish a fire.

[6] EPCA specifies the types of industrial equipment that can be classified as covered in addition to the equipment enumerated in 42 U.S.C. 6311(1). This equipment includes ''other motors'' (to be codified at 42 U.S.C. 6311(2)(B)). Industrial equipment must also, without regard to whether such equipment is in fact distributed in commerce for industrial or commercial use, be of a type that: (1) In operation consumes, or is designed to consume, energy in operation; (2) to any significant extent, is distributed in commerce for industrial or commercial use; and (3) is not a covered product as defined in 42 U.S.C. 6291(a)(2) of EPCA, other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c). (42 U.S.C. 6311 (2)(A)). Data from the 2002 United States Industrial Electric Motor Systems Market Opportunities Assessment estimated total energy use from industrial motor systems to be 747 billion kWh. Based on the expansion of industrial activity, it is likely that current annual electric motor energy use is higher than this figure. Electric motors are distributed in commerce for both the industrial and commercial

Continued

Consistent with the changes made by EISA 2007, DOE defined the term ''electric motor'' broadly. See 77 FR 26633 (May 4, 2012). That definition covers ''general purpose,'' ''special purpose'' and ''definite purpose'' electric motors (as defined by EPCA). Previously, EPCA did not require either ''special purpose'' or ''definite purpose'' motor types to meet energy conservation standards because they were not considered ''general purpose'' under the EPCA definition of ''general purpose motor''—a necessary element to meet the pre-EISA 2007 ''electric motor'' definition. See 77 FR 26612. Because of the restrictive nature of the prior electric motor definition, along with the restrictive definition of the term ''industrial equipment,'' DOE would have been unable to set standards for such motors. (See 42 U.S.C. 6311(2)(B) (limiting the scope of equipment covered under EPCA)) In view of the changes introduced by EISA 2007 and the absence of current Federal energy conservation standards for special purpose and definite purpose motors, as noted in chapter 2 of DOE's July 2012 electric motors preliminary analysis technical support document (TSD),[7] it is DOE's view that both are categories of ''electric motors'' covered under EPCA, as currently amended. Accordingly, DOE is considering establishing standards for certain definite purpose and special purpose motors in the context of a separate rulemaking. At this time, DOE is considering setting energy conservation standards for only those motors that exhibit all of the following nine characteristics:

- Is a single-speed, induction motor,
- Is rated for continuous duty (MG1) operation or for duty type S1 (IEC),
- Contains a squirrel-cage (MG1) or cage (IEC) rotor,
- Operates on polyphase alternating current 60-hertz sinusoidal line power,
- Is rated 600 volts or less,
- Has a 2-, 4-, 6-, or 8-pole configuration,
- Has a three-digit NEMA frame size (or IEC metric equivalent) or an enclosed 56 NEMA frame size (or IEC metric equivalent),
- Is rated no more than 500 horsepower, but greater than or equal to 1 horsepower (or kilowatt equivalent), and
- Meets all of the performance requirements of one of the following motor types: a NEMA Design A, B, or C motor or an IEC design N or H motor.

Motor types that exhibit all of the characteristics listed above, but that DOE is declining to subject to energy conservation standards at this time because of the inability to test them for efficiency in a repeatable manner, would be identified by DOE through a parallel notice of proposed rulemaking. To prepare this test procedure NOPR, DOE has incorporated feedback received during the August 21, 2012, electric motors standards preliminary analysis public meeting, comments on the March 2011 RFI, and comments on the July 2012 electric motors preliminary analysis (''electric motors preliminary analysis'') as well as information gleaned from discussions with testing laboratories, manufacturers, and subject matter experts (SMEs).

To facilitate the potential application of energy conservation standards to motors built in the configurations described above, DOE proposes to first define the motors and then provide additional testing instructions to enable them to be tested using the existing DOE test method for electric motors. The definitions under consideration would address motors currently subject to standards, certain motors DOE is considering requiring to meet standards, and certain other motors that DOE is, at this time, considering not regulating through energy conservation standards. Some clarifying definitions, such as the definitions for NEMA Design A and NEMA Design C motors from NEMA MG1–2009, would be added. However, DOE understands that some motors, such as partial motors and integral brake motors, do not have standard, industry-accepted definitions. For such motor types, DOE conducted its own independent research and consulted with SMEs, manufacturers, and the Motor Coalition so that DOE could create the working definitions that are proposed in section III of this NOPR. For the definitions of *''electric motor with moisture resistant windings'' and ''electric motor with sealed windings,''* which reference certain subsections of NEMA MG1–2009, DOE intends to incorporate by reference the cited sections of NEMA MG1–2009.

DOE believes that the existing IEEE Standard 112 (Test Method B) and CSA C390–10 test procedures can be used to accurately measure losses and determine the energy efficiency for this additional group (or ''expanded scope'') of motors because all of the motor types under consideration are single-speed, polyphase induction motors with electromechanical characteristics similar to those currently subject to energy conservation standards. While some of these motor types require the addition of testing step-up instructions prior to testing, all can be tested using the same methodology provided in those industry-based procedures DOE has already incorporated into its regulations.

Testing an electric motor using IEEE Standard 112 (Test Method B) or CSA C390–10 requires some basic electrical connections and physical configurations. To test an electric motor under either procedure, the electric motor is first mounted on a test bench in a horizontal position. This means that the motor shaft is horizontal to the test bench and the motor is equipped with antifriction bearings that can withstand operation while in a horizontal position.[8] Instruments are then connected to the power leads of the motor to measure input power, voltage, current, speed, torque, temperature, and other input, output, and performance characteristics. Thermocouples are attached to the motor to facilitate temperature measurement. Stator winding resistance is measured while the motor is at ambient, or room, temperature. No-load measurements are recorded while the motor is operating, both temperature and input power have stabilized, and the shaft extension is free from any attachments. After ambient temperature and no-load measurements are taken, a dynamometer is attached to the motor shaft to take ''loaded'' measurements. A dynamometer is a device that simultaneously applies and measures torque for a motor. The dynamometer applies incremental loads to the shaft, typically at 25, 50, 75, 100, 125, and 150 percent of the motor's total rated output horsepower. This allows the testing laboratory to record motor performance

sectors. According to data provided by the Motors Coalition, the number of electric motors manufactured in, or imported into, the United States is over five million electric motors annually, including special and definite purpose motors. Finally, special and definite purpose motors are not currently regulated under Title 10 of the Code of Federal Regulations, part 430 (10 CFR part 430).

To classify equipment as covered commercial or industrial equipment, the Secretary must also determine that classifying the equipment as covered equipment is necessary for the purposes of Part A–1 of EPCA. The purpose of Part A–1 is to improve the efficiency of electric motors, pumps and certain other industrial equipment to conserve the energy resources of the nation. (42 U.S.C. 6312(a)–(b)) In today's proposal, DOE has tentatively determined that the regulation of special and definite purpose motors is necessary to carry out the purposes of part A–1 of EPCA because regulating these motors will promote the conservation of energy supplies. Efficiency standards that may result from coverage would help to capture some portion of the potential for improving the efficiency of special and definite purpose motors.

[7] The preliminary TSD published in July 2012 is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0027-0023*

[8] DOE is aware of some types of bearings that cannot operate while the motor is in a horizontal position. DOE addresses such bearings in later sections of this NOPR.

criteria, such as power output and torque, at each incremental load point. Additional stator winding resistance measurements are taken to record the temperature at the different load points.

DOE believes that clarifying instructions may be necessary to test some of the expanded-scope motors that DOE is considering and for which DOE is conducting an energy conservation standards rulemaking because some motors may require modifications before they can operate continuously and be tested on a dynamometer in a manner consistent with the current DOE test procedure. For example, a partial electric motor may be engineered for use without one or both endshields, including bearings, because it relies on mechanical support from another piece of equipment. Without these components, the motor would be unable to operate as a stand-alone piece of equipment. Therefore, DOE is proposing to add instructions to facilitate consistent and repeatable procedures for motors such as these. These additions were based on testing and research conducted by the Department along with technical consultations with SMEs, manufacturers, testing laboratories, and various trade associations. Table III–1 lists those electric motors that are covered under current energy conservation standards or that DOE is analyzing for potential new energy conservation standards. In each case, the table identifies whether DOE is proposing to address a given motor through the use of new definitions, test procedure instructions, or both.

TABLE III–1—MOTOR TYPES CONSIDERED FOR REGULATION IN DOE PROPOSED TEST PROCEDURE AND STANDARDS RULEMAKINGS

Motor type	Currently subject to standards?	Under consideration for potential standards?	New definition proposed?	Additional set-up instructions proposed?
NEMA Design A Motors	Yes	Yes	Yes	No.
NEMA Design C Motors	Yes	Yes	Yes	No.
IEC Design N Motors	Yes	Yes	Yes	No.
IEC Design H Motors	Yes	Yes	Yes	No.
Electric Motors with Moisture Resistant or Sealed Windings	No	Yes	Yes	No.
Inverter-Capable Electric Motors	Yes	Yes	Yes	No.
Totally Enclosed Non-Ventilated Electric Motors	No	Yes	Yes	No.
Immersible Electric Motors	No	Yes	Yes	Yes.
Electric Motors with Contact Seals	Yes	Yes	No	Yes.
Integral Brake Electric Motors	No	Yes	Yes	Yes.
Non-Integral Brake Electric Motors	Yes	Yes	Yes	Yes.
Partial Electric Motors	No	Yes	Yes	Yes.
Electric Motors with Non-Standard Endshields or Flanges	No	Yes	No	Yes.
Close-Coupled Pump Electric Motors	Yes	Yes	No	Yes.
Electric Motors with Special Shafts	No	Yes	No	Yes.
Vertical Solid Shaft Motors	Yes	Yes	No	Yes.
Vertical Hollow-Shaft Motors	No	Yes	No	Yes.
Electric Motors with Thrust Bearings	No	Yes	No	Yes.
Electric Motors with Sealed Bearings	Yes	Yes	No	Yes.
Electric Motors with Roller Bearings	No	Yes	No	Yes.
Electric Motors with Sleeve Bearings	Yes	Yes	No	Yes.
Electric Motors with Non-Standard Bases	No	Yes	No	No.
Air-Over Electric Motors	No	No	Yes	No.
Component Sets	No	No	Yes	No.
Liquid-cooled Electric Motors	No	No	Yes	No.
Submersible Electric Motors	No	No	Yes	No.
Definite-Purpose Inverter-Fed Electric Motors	No	No	Yes	No.

C. Motor Type Definitions

During the course of the 2012 final test procedure rulemaking, some interested parties questioned why DOE defined NEMA Design B motors but not NEMA Design A or Design C motors. DOE explained that it chose to adopt a definition for ''NEMA Design B'' motor because the application section in MG1 (MG1–1.19.1.2 in both MG1–2009 and MG1–2011) contained a typographical error that required correcting for purposes of DOE's regulations. DOE also noted that it may incorporate a corrected version of the ''NEMA Design C'' motor definition in a future rulemaking—that definition, which is found in MG1–1.19.1.3, also contains a typographical error. DOE did not intend to add definitions for NEMA Design A and IEC Design N, as the existing definitions found in MG1 are correct as published. 77 FR 26616, 26634 (May 4, 2012). In view of DOE's intention to consider regulating other types of motors, DOE now believes it is necessary to make clear the terms and definitions for them as well. DOE understands that many terms and definitions applicable to motors and used in common industry parlance for voluntary standards and day-to-day business communication are not necessarily defined with sufficient clarity for regulatory purposes. DOE does not, at this time, propose to add amendments related to such types of motors other than to provide more precise definitions for them to sufficiently capture the particular characteristics attributable to each and aid the manufacturing community in determining whether a particular basic model is covered by DOE's regulations for electric motors.

1. National Electrical Manufacturers Association Design A and Design C Motors

NEMA MG1–2009 defines the following three types of polyphase, alternating current, induction motors: NEMA Designs A, B, and C. NEMA MG1–2009 establishes the same pull-up, breakdown, and locked-rotor torque requirements for both NEMA Design A

and NEMA Design B motors.[9] However, a NEMA Design A motor must be designed such that its locked-rotor current exceeds the maximum locked-rotor current established for a NEMA Design B motor. Unless the application specifically requires the higher locked-rotor current capability offered by a NEMA Design A motor, a NEMA Design B motor (that has the same specified minimum torque characteristics as the NEMA Design A motor) is often used instead because of the additional convenience offered by these motors when compared to Design A motors. (See NEMA, EERE–2010–BT–STD–0027–0054 at 36 (noting the additional convenience offered by Design B motors over Design A motors with respect to selecting disconnecting methods and in satisfying National Electrical Code and Underwriters Laboratory requirements.)) In addition, DOE understands that NEMA Design B motors are frequently preferred because the user can easily select motor control and protection equipment that meets the applicable requirements of the National Fire Protection Association (NFPA) National Electrical Code (NFPA 70). These motors are also listed by private testing, safety, or certification organizations, such as CSA International and Underwriters Laboratory. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 36) A NEMA Design C motor requires a minimum locked-rotor torque per NEMA MG1–2009, Table 12–3, which is higher than either the NEMA Design A or Design B minimum locked-rotor torque required per NEMA MG1–2009, Table 12–2.

In view of the above, DOE is proposing to incorporate a definition for both ''NEMA Design A motor'' and ''NEMA Design C motor'' to improve regulatory clarity. DOE notes it has already adopted a definition for ''NEMA Design B motor'' at 10 CFR 431.12. DOE believes that providing definitions for other motor types will provide consistency in the treatment of all considered motors. The proposed definitions for NEMA Design A and Design C motors are based on the definitions in NEMA MG1–2009, paragraphs 1.19.1.1 and 1.19.1.3, respectively. DOE believes that the NEMA MG1–2009 definition of ''NEMA Design A motor'' is sufficiently clear and concise and is proposing to add it with minor clarifying elements. DOE is proposing to incorporate the definition of ''NEMA Design C motor'' from NEMA MG1–2009, paragraph 1.19.1.3 with some minor corrections because the NEMA MG1–2009 definition appears to contain typographical errors [10] with regard to the tables referenced in the definition. As detailed in the proposed regulations below, a NEMA Design A motor is defined as a squirrel-cage motor designed to withstand full-voltage starting and developing locked-rotor torque, pull-up torque, breakdown torque, and locked-rotor current as specified in NEMA MG1–2009; and with a slip at rated load of less than 5 percent for motors with fewer than 10 poles. A NEMA Design C motor is defined as a squirrel-cage motor designed to withstand full-voltage starting and developing locked-rotor torque for high-torque applications, pull-up torque, breakdown torque, and locked-rotor current as specified in NEMA MG1–2009; and with a slip at rated load of less than 5 percent.

As previously mentioned, DOE is proposing these definitions to retain consistency with other already incorporated regulatory definitions. General purpose electric motors that meet the definition of NEMA Design A and Design C motor and are rated between 1 and 200 horsepower are currently subject to energy conservation standards. DOE is not aware of any difficulties in testing either of these motor design types using the current procedures. Therefore, DOE is not proposing any test procedure amendments for these motor types at this time. DOE requests comment on its proposal to incorporate definitions for NEMA Design A and NEMA Design C motors based on the NEMA MG1–2009 definitions of these motor designs.

2. International Electrotechnical Commission Designs N and H Motors

Similar to NEMA, the European International Electrotechnical Commission (IEC) produces industry standards that contain performance requirements for electric motors. Analogous to NEMA Designs B and C, the IEC has design types N and H. IEC Design N motors have similar performance characteristics to NEMA Design B motors, while IEC Design H motors are similar to NEMA Design C motors. Because many motors imported into the U.S. are built to IEC specifications instead of NEMA specifications, DOE is proposing to include a definition for IEC Design N and IEC Design H motor types to ensure that these functionally similar motors are treated in a manner consistent with equivalent NEMA-based electric motors and to retain overall consistency with the existing definitional framework.

DOE's proposed definition for ''IEC Design N motor'' incorporates language from IEC Standard 60034–12 (2007 Ed. 2.1) (IEC 60034) with some modifications that would make the definition more comprehensive. IEC 60034 defines IEC Design N motors as being ''normal starting torque three-phase cage induction motors intended for direct-across the line starting, having 2, 4, 6 or 8 poles and rated from 0,4 kW to 1 600 kW,'' with torque characteristics and locked-rotor characteristics detailed in subsequent tables of the standard.[11] A similar approach for IEC Design H motors is taken in IEC 60034, but with references to different sections and slightly different wording. DOE is proposing to include all references to tables for torque characteristics and locked-rotor characteristics as part of these definitions to improve their comprehensiveness. As detailed in the proposed regulations below, today's proposed rule defines an ''IEC Design N motor'' as an induction motor designed for use with three-phase power with the following characteristics: a cage rotor, intended for direct-on-line starting, having 2, 4, 6, or 8 poles, rated from 0.4 kW to 1600 kW, and conforming to IEC specifications for torque characteristics, locked rotor apparent power, and starting. An ''IEC Design H motor'' is defined as an induction motor designed for use with three-phase power with the following characteristics: a cage rotor, intended for direct-on-line starting, with 4, 6, or 8 poles, rated from 0.4 kW to 160 kW, and conforming to IEC specifications for starting torque, locked rotor apparent power, and starting.

Electric motors that meet these performance requirements and

[9] *Locked-rotor torque* is the torque that a motor produces when it is at rest or zero speed and initially turned on. A higher locked-rotor torque is important for hard-to-start applications, such as positive displacement pumps or compressors. A lower locked-rotor torque can be accepted in applications such as centrifugal fans or pumps where the start load is low or close to zero. *Pull-up torque* is the torque needed to cause a load to reach its full rated speed. If a motor's pull-up torque is less than that required by its application load, the motor will overheat and eventually stall. *Breakdown torque* is the maximum torque a motor can produce without abruptly losing motor speed. High breakdown torque is necessary for applications that may undergo frequent overloading, such as a conveyor belt. Often, conveyor belts have more product or materials placed upon them than their rating allows. High breakdown torque enables the conveyor to continue operating under these conditions without causing heat damage to the motor.

[10] In NEMA MG1–2009, the definition for NEMA Design C refers the reader to paragraph 12.34.1 for locked-rotor current limits for 60 hertz motors. The appropriate paragraph appears to be 12.35.1.

[11] Across-the-line (or direct-on-line) starting is the ability of a motor to start directly when connected to a polyphase sinusoidal power source without the need for an inverter.

otherwise meet the definitions of general purpose electric motor (subtype I) or (subtype II) are already required to satisfy DOE's energy conservation standards at specified horsepower ranges. Because these IEC definitions stipulate a set of performance parameters that do not inhibit an electric motor's ability to be tested, DOE is not proposing any additional test procedure amendments at this time. However, DOE requests comment on the proposed definitions.

3. Electric Motors With Sealed and Moisture Resistant Windings

All electric motors have ''insulation systems'' that surround the various copper winding components in the stator. The insulation, such as a resin coating or plastic sheets, serves two purposes. First, it helps separate the three electrical phases of the windings from each other and, second, it separates the copper windings from the stator lamination steel. Electric motors with encapsulated windings have additional insulation that completely encases the stator windings, which protects them from condensation, moisture, dirt, and debris. This insulation typically consists of a special material coating, such as epoxy or resin that completely seals the stator's windings. Encapsulation is generally found on open-frame motors, where the possibility of contaminants getting inside the motor is higher than for an enclosed-frame motor.

In the electric motors preliminary analysis TSD,[12] DOE set forth a possible definition for the term ''encapsulated electric motor.'' The definition presented was based upon a NEMA definition for the term ''Machine with Sealed Windings'' and was intended to cover motors containing special windings that could withstand exposure to contaminants and moisture. As highlighted in NEMA and Baldor's comments, NEMA MG1–2009 does not specify a single term that encompasses a motor with encapsulated windings. Instead, NEMA MG1–2009 provides two terms: one for a ''Machine with Sealed Windings'' and one for a ''Machine with Moisture Resistant Windings.'' A definition for the term ''Machine with Encapsulated Windings'' has not appeared in MG1 since the 1967 edition. Because of potential confusion, NEMA asked DOE to clarify which type of motor, or possibly both, DOE was considering covering. (Baldor, Pub. Mtg. Tr., EERE–2010–BT–STD–0027–0060 at p 52; NEMA, EERE–2010–BT–STD–0027–0054 at p. 33)

After reviewing the two pertinent definitions, the comments from Baldor and NEMA, and DOE's own research on these types of motors, DOE believes that motors that meet both definitions should be covered by any proposed definition and be included within its expanded scope of coverage. The ability for a motor's windings to continue to function properly when the motor is in the presence of moisture, water, or contaminants, as is the case when a motor meets one of these two definitions, does not affect its ability to be connected to a dynamometer and be tested for efficiency. Additionally, this ability does not preclude a motor from meeting the nine criteria that DOE is preliminarily using to characterize the electric motors that are within the scope of DOE's regulatory authority. Therefore, DOE is proposing two definitions based on the NEMA MG1—2009 definitions of a ''Machine with Moisture Resistant Windings'' and a ''Machine with Sealed Windings.'' DOE's proposed definitions are based on modified versions of the NEMA MG1—2009 definitions in order to eliminate potential confusion and ambiguities. The proposed definitions emphasize the ability of motors to pass the conformance tests for moisture and water resistance, thereby identifying them as having special or definite purpose characteristics. As detailed in the proposed regulations below, today's proposed rule defines ''electric motor with moisture resistant'' as an electric motor engineered to pass the conformance test for moisture resistance as specified in NEMA MG1–2009. An ''electric motor with sealed windings'' is defined as an electric motor engineered to pass the conformance test for water resistance as specified in NEMA MG1–2009.

In addition to proposing a definition for these motor types, DOE also considered difficulties that may arise during testing when following IEEE Standard 112 Test Method B or CSA C390–10 or any potential impacts on efficiency caused by encapsulation of the windings. While DOE received comment advocating the regulation of motors with special windings, it did not receive any comments suggesting or raising any necessary test procedure changes that would need to be made as a result of the stator winding encapsulation. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 14) Subsequently, DOE conducted its own research and consulted with testing laboratories and various industry experts regarding any effects that specially insulated windings may have on testing or efficiency.

As a result of these discussions, DOE does not believe that the presence of specially insulated stator windings in an electric motor would interfere with DOE-prescribed test procedures. Also, because temperature measurements are taken by measuring the stator winding resistance, DOE does not believe that the insulation on the stator windings themselves would interfere with carrying out any part of IEEE Standard 112 (Test Method B) or CSA C390–10, both of which require temperature measurements to be taken during testing. The modifications made to stator windings have no impact on a motor's ability to be connected to a dynamometer because they are modifications to the internal portions of the motor. Therefore, at this time, DOE is not proposing any test procedure amendments for electric motors with moisture resistant windings or electric motors with sealed windings.

DOE believes that the effects that specially insulated windings may have on an electric motor's efficiency are likely to be minimal. Although DOE recognizes there could be a change in the thermal characteristics of the motor, DOE believes that the additional treatment given to these specially insulated windings could, in some cases, improve heat dissipation. Again, however, DOE does not believe that the efficiency changes, whether positive or negative, will be significant. DOE requests any data, information, or comments regarding the effects of specially insulated stator windings on electric motor efficiency.

DOE also seeks comment on its proposed definition for motors with moisture resistant windings and motors with sealed windings and its preliminary decision not to propose additional testing instructions for these motors types.

4. Inverter-Capable Electric Motors

DOE currently regulates single speed motors with a 2-, 4-, 6-, or 8-pole configuration. Each of these motors operates at a constant rotational speed, which is predicated by its pole configuration. This means that the motor shaft is engineered to rotate at the same speed, regardless of its application or required power. In addition to its

[12] The preliminary TSD published in July 2012 is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0027-0023.*

pole configuration, a motor's rotational speed is partially determined by the frequency of its power source. The equation determining a motor's theoretical maximum speed (or synchronous speed) is:

$$\text{Synchronous Speed of Motor} = \frac{120 * (\text{Frequency of Power Source})}{\text{Number of Motor Poles}}$$

Inverter drives (also called variable-frequency drives (VFDs), variable-speed drives, adjustable frequency drives, alternating-current drives, microdrives, or vector drives) operate by changing the frequency and voltage of the power source that feeds into an electric motor. The inverter is connected between the power source and the motor and provides a variable frequency power source to the motor. The benefit of the inverter is that it can control the frequency of the power source fed to the motor, which in turn controls the rotational speed of the motor. This allows the motor to operate at a reduced speed when the full, nameplate-rated speed is not needed. This practice can save energy, particularly for fan and pump applications that frequently operate at reduced loading points. Inverters can also control the start-up characteristics of the motor, such as locked-rotor current or locked-rotor torque, which allows a motor to employ higher-efficiency designs while still attaining locked-rotor current or locked-rotor torque limits standardized in NEMA MG1–2009.[13]

Currently, being suitable for use on an inverter alone would not exempt a motor from having to satisfy any applicable energy conservation requirements because it does not preclude a motor from meeting the nine design characteristics of electric motors that will define regulatory coverage. In today's NOPR, DOE is maintaining this approach. However, today's NOPR seeks to further clarify this position by proposing a definition for the term ''inverter-capable electric motor.''

In its comments about the electric motors preliminary analysis, NEMA provided suggestions on how to define inverter capable-electric motors. NEMA agreed with DOE that these motors are capable of both operating with or without an inverter. However, NEMA stressed that these electric motors are primarily engineered to be used without an inverter and, in its view, this fact should be evident by the definition DOE ultimately adopts. NEMA also provided a suggested definition for the term ''inverter-capable electric motor.'' (NEMA, EERE–2010–BT–STD–0027–0054 at pp. 34–35) This definition, similar in substance and meaning to the definition that DOE presented in the electric motors preliminary analysis but including a few minor word changes, is consistent with DOE's understanding. As detailed in the proposed regulations below, today's proposed rule defines an ''inverter-capable electric motor'' as an electric motor designed to be directly connected to polyphase, sinusoidal line power, but that is also capable of continuous operation on an inverter drive over a limited speed range and associated load.

Because this motor type operates like a typical, general purpose electric motor when not connected to an inverter, DOE does not believe any test procedure amendments are needed. Under DOE's proposed approach, an inverter-capable electric motor would be tested without the use of an inverter and rely on the procedures used when testing a general purpose electric motor. DOE requests comments on its proposed definition and its tentative decision not to specify any test procedure instructions for this motor type beyond that which is already contained in the current procedure.

5. Totally Enclosed Non-Ventilated Electric Motors

Most enclosed electric motors are constructed with a fan attached to the shaft, typically on the end opposite the driven load, as a means of pushing air over the surface of the motor enclosure, which helps dissipate heat and reduce the motor's operating temperature. Totally enclosed non-ventilated (TENV) motors, however, have no fan blowing air over the surface of the motor. These motors rely, instead, on the conduction and convection of the motor heat into the surrounding environment for heat removal, which results in a motor that operates at higher temperatures than motors with attached cooling fans. TENV motors may be used in environments where an external fan could clog with dirt or dust, or applications where the shaft operates at too low of a speed to provide sufficient cooling (i.e., a motor controlled by an inverter to operate at very low revolutions per minute). TENV motors may employ additional frame material as well as improved stator winding insulation so that the motor may withstand the increased operating temperatures. Extra frame material allows for more surface area and mass to dissipate heat, whereas higher-grade stator winding insulation may be rated to withstand the higher operating temperatures.

In view of the statutory definitional changes created by EISA 2007, and the support expressed by both industry and energy efficiency advocates, DOE is analyzing TENV motors in the energy conservation standards rulemaking. (Motor Coalition, EERE–2010–BT–STD–0027–0035 at p. 19) As part of this effort, DOE proposes to add a definition for this motor type based on the definition of a ''totally enclosed nonventilated machine'' in paragraph 1.26.1 of NEMA MG1–2009. DOE tentatively concludes that this definition is accurate and sufficiently clear and concise and is proposing that the definition be adopted with minor alterations. As detailed in the proposed regulations below, today's proposed rule defines a ''TENV electric motor'' as an electric motor built in a frame-surface cooled, totally enclosed configuration that is designed and equipped to be cooled only by free convection.

In addition to proposing a definition for these motors, DOE considered whether any modifications to the test procedure may be necessary to test TENV motors. Prior to the electric motors preliminary analysis, ASAP and NEMA submitted comments suggesting that manufacturers could demonstrate compliance with the applicable energy conservation standards by testing similar models. (ASAP and NEMA, EERE–2010–BT–STD–0027–0012 at p. 7) Although NEMA and ASAP suggested this was a possible way to test these motors to demonstrate compliance, they did not state that this was necessary because of testing difficulties. Subsequently, after DOE published its electric motors preliminary analysis, NEMA stated that it was not aware of any changes that were required to use IEEE Standard 112 (Test Method B) when testing TENV motors. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 16) The Copper Development Association (CDA) commented that DOE may need to develop new test procedures for these motor types but did not explain why such a change would

[13] Li, Harry. *Impact of VFD, Starting Method and Driven Load on Motor Efficiency.* 2011. Siemens Industry, Inc.

be necessary. (CDA, EERE–2010–BT–STD–0027–0018 at p. 2) CDA did not indicate whether the current procedures could be modified to test these motors or what specific steps would need to be included to test these types of motors. Additionally, DOE knows of no technical reason why a TENV motor could not be tested using either IEEE Standard 112 (Test Method B) or the CSA–C390 procedure without modification. In view of NEMA's most recent comments suggesting that IEEE Standard 112 (Test Method B) is an appropriate means to determine the efficiency of these motors, and the fact that the CDA did not provide an explanation of why changes would be necessary, DOE is not proposing any test procedure amendments for TENV electric motors.

DOE requests comments on its proposed definition and preliminary decision not to propose any test procedure amendments for TENV electric motors.

D. Electric Motor Types Requiring Definitions and Test Procedure Instructions

DOE is proposing to add definitions for a number of electric motor types that are already commonly understood, but not necessarily clearly defined, by the industry. DOE is also proposing clarifying language for testing each of these motor types.

1. Immersible Electric Motors and Electric Motors With Contact Seals

Most electric motors are not engineered to withstand immersion in liquid (e.g., water, including wastewater). If liquid enters an electric motor's stator frame, it could create electrical faults between the different electrical phases or electrical steel and could impede rotor operation or corrode internal components. Immersible motors are electric motors that are capable of withstanding immersion in a liquid without causing damage to the motor. Immersible motors can withstand temporary operation in liquid, sometimes up to two weeks, but also run continuously outside of a liquid environment because they do not rely on the liquid to cool the motor. According to test 7 in Table 5–4 of NEMA MG1–2009, for a motor to be marked as protected against the effects of immersion, a motor must prevent the ingress of water into the motor while being completely submerged in water for a continuous period of at least 30 minutes. Therefore, DOE interprets ''temporary'' to mean a period of time of no less than 30 minutes. Immersible motors can operate while temporarily submerged because they have contact seals that keep liquid and other contaminants out of the motor. Additionally, some immersible motors may have pressurized oil inside the motor enclosure, which is used in conjunction with contact seals to prevent the ingress of liquid during immersion. Finally, immersible motors are occasionally constructed in a package that includes another, smaller (e.g., ½ horsepower) motor that is used to improve cooling when the immersible motor is not submerged in water. In these cases, the two motors are constructed in a totally enclosed blower-cooled (TEBC) frame and sold together.

In responding to the October 15, 2010 framework document, NEMA and ASAP commented that greater clarification is needed with regard to immersible motors and how to differentiate them from liquid-cooled or submersible motors. (NEMA and ASAP, EERE–2010–BT–STD–0027–0012 at p. 9) DOE understands the general differences to be as follows:

1. Submersible motors are engineered to operate only while completely surrounded by liquid because they require liquid for cooling purposes,
2. Liquid-cooled motors use liquid (or liquid-filled components) to facilitate heat dissipation but are not submerged in liquid during operation, and
3. Immersible motors are capable of operating temporarily while surrounded by liquid, but are engineered to work primarily out of liquid.

As a result, as detailed in the proposed regulations below, today's proposed rule defines an immersible electric motor as an electric motor primarily designed to operate continuously in free-air, but that is also capable of withstanding complete immersion in liquid for a continuous period of no less than 30 minutes.

The contact seals used by immersible motors to prevent the ingress of water or other contaminants have an effect on tested efficiency that generally changes over time. New seals are stiff, and provide higher levels of friction than seals that have been used and undergone an initial break-in period.[14] DOE understands that as the seals wear-in they will loosen and become more flexible, which will somewhat reduce friction losses. In its comments on the electric motors preliminary analysis, NEMA stated that immersible motors should be tested with their contact seals removed. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 18)

DOE discussed testing immersible electric motors with industry experts, SMEs, and testing laboratories, all of whom suggested that the seals should be removed prior to testing to eliminate any impacts on the tested efficiency. Given the break-in period considerations discussed above, DOE sought to confirm the effects of contact seals by conducting its own testing. DOE procured a five-horsepower, two-pole, TENV motor for this purpose.[15] Upon receipt of the motor, DOE's testing laboratory followed IEEE Standard 112 (Test Method B) and tested the motor as it was received, with the contact seals in place (test 1). After completing that initial test, the laboratory removed the contact seals and tested the motor again (test 2). Finally, the testing laboratory reinstalled the seals, ran the motor for an additional period of time such that the motor had run for a total of 10 hours with the contact seals installed (including time from the initial test) and then performed IEEE Standard 112 (Test Method B) again (test 3).

DOE's testing confirmed the significant impact that contact seals can have on demonstrated efficiency. In the case of the five-horsepower, two-pole, TENV motor, the motor performed significantly better with the contact seals removed, demonstrating a reduction in motor losses of nearly 20 percent. DOE's testing also demonstrated a decaying effect of the contact seals on motor losses as they break-in over time. In this instance, the effect of the contact seals on motor losses was reduced, but not eliminated, after 10 hours of running the motor. The results of DOE's immersible motor testing are shown below.

[14] *Guide for the Use of Electric Motor Testing Methods Based on IEC 60034–2–1.* May 2011. Version 1.1. 4E, Electric Motors Systems, EMSA, available at: *http://www.motorsystems.org/files/otherfiles/0000/0113/guide_to_iec60034-2-1_may2011.pdf* and Neal, Michael J. *The Tribology Handbook Second Edition.* Page C26.5.

[15] The immersible motor tested by DOE was also a vertical, solid-shaft motor. The testing laboratory was able to orient the motor horizontally without any issues, thus being able to test the motor properly per IEEE 112 Test Method B.

TABLE III–2—RESULTS OF IMMERSIBLE MOTOR TESTING

Motor type	Nameplate efficiency	Test 1 (percent)	Test 2 (percent)	Test 3 (percent)
Immersible Motor (also TENV and a vertical solid-shaft motor)	89.5	88.9	91.0	89.2

Although DOE's testing confirmed that the impacts from contact seals can be significant and may reduce over time, DOE is proposing test procedure instructions that differ from the recommendations offered by interested parties. DOE believes testing with the contact seals may better represent an immersible motor's installed efficiency. DOE does not have specific data showing how the impacts from contact seals decay over time and DOE believes this decay may vary by basic model of immersible motor. In absence of such data showing near equivalent performance of immersible motors that are tested without contact seals to those that have contact seals that have been broken in, DOE is proposing that these motors be tested with the contact seals in place. In addition, DOE is proposing an allowance of a maximum run-in period of 10 hours prior to performing IEEE Standard 112 (Test Method B). This run-in period is intended to allow the contact seals a sufficient amount of time to break-in such that test conditions are equal or very similar to normal operating conditions that will be experienced by a user. DOE's proposed 10-hour maximum is a preliminary estimate obtained through discussions with electric motors testing experts. DOE may consider a longer run-in period or potentially removing the seals prior to testing in the final rule if data are obtained from manufacturers that substantiate the claim that an immersible motor's contact seals will wear-in, early on during the motor's lifetime (i.e., 200 hours), and to the point that the motor's efficiency is not affected. DOE is soliciting comments on its 200 hour assumption in its early motor lifetime estimate.

Finally, with regard to immersible motors built in a TEBC configuration, DOE is proposing instructions that would require the testing laboratory to power the smaller blower motor from an alternate power source than the one used for the electric motor being tested for efficiency. This approach will allow the testing laboratory to isolate the performance of the motor under test while continuing to provide the necessary cooling from the blower motor.

DOE requests comments concerning its proposed definition for ''immersible electric motor,'' especially with respect to differentiating this motor type from ''liquid-cooled'' and ''submersible'' motors. Additionally, DOE invites comment on its proposal to permit manufacturers to run their motors for a period of time prior to performing IEEE Standard 112 (Test Method B) to break-in any contact seals. In particular, DOE requests comment and any data on the appropriateness of the proposed 10-hour time limit allowable for the run-in period. Finally, DOE requests comment on the appropriateness of allowing manufacturers to use an alternative power source to run the blower motor while testing an immersible motor built in a TEBC frame.

2. Integral and Non-Integral Brake Electric Motors

In most applications, electric motors are not required to stop immediately; instead, electric motors typically slow down and gradually stop after power is removed from the motor, due to a buildup of friction and windage from the internal components of the motor. However, some applications require electric motors to stop quickly. Such motors may employ a brake component that, when engaged, abruptly slows or stops shaft rotation. The brake component attaches to one end of the motor and surrounds a section of the motor's shaft. During normal operation of the motor, the brake is disengaged from the motor's shaft—it neither touches nor interferes with the motor's operation. However, under these conditions, the brake is drawing power from the electric motor's power source and may be contributing to windage losses, because the brake is an additional rotating component on the motor's shaft. When power is removed from the electric motor (and brake component), the brake component de-energizes and engages the motor shaft, quickly slowing or stopping rotation of the rotor and shaft components.

There are two general types of brake motors—integral and non-integral brake motors. An electric motor falls into one of these two categories depending on how its brake component is connected to the motor. If the brake component is integrated with other components of the electric motor and not readily detachable, it is usually considered [16] an integral brake motor. Conversely, if the brake component is connected externally and is more readily detachable, it is considered a non-integral brake motor.

In its August 15, 2012 ''Joint Petition to Adopt Joint Stakeholder Proposal As it Relates to the Rulemaking on Energy Conservation Standards for Electric Motors'' (the Petition), the Motor Coalition proposed a definition for the term ''integral brake electric motor.'' That definition stated that an integral brake electric motor is ''an electric motor containing a brake mechanism either inside of the motor endshield or between the motor fan and endshield such that removal of the brake component would require extensive disassembly of the motor or motor parts.'' (Motor Coalition, EERE–2010–BT–STD–0027–0035 at p. 19) Subsequent to the submission of the petition, DOE spoke with some of the Motor Coalition's manufacturers and its own SMEs. Based on these conversations, DOE believes that the Motor Coalition's definition is consistent with DOE's understanding of the term. In the electric motors preliminary analysis, DOE presented a definition of the term ''integral brake motor'' consistent with the definition proposed by the Motor Coalition. (For additional details, see Chapter 3 of the electric motors preliminary analysis Technical Support Document). However, upon further consideration, DOE believes that there may be uncertainty regarding certain aspects of the definition, particularly, what constitutes ''extensive disassembly of the motor or motor parts.'' Therefore, DOE is proposing a new definition that would remove this ambiguity. As detailed in the proposed regulations below, today's proposed rule defines an ''integral brake electric motor'' as an electric motor containing a brake mechanism either inside of the motor endshield or between the motor fan and endshield.

Conversely, the brake component of a non-integral brake motor is usually external to the motor and can be easily

[16] DOE's proposed definitions for integral and non-integral brake motors do not require a certain manner of attachment of the brake rather, the placement of the brake is the relevant distinctive factor.

detached without disassembly or adversely affecting the motor's performance. However, as with the definition of an ''integral brake motor,'' DOE reconsidered the definition it presented in its electric motors preliminary analysis TSD for ''non-integral brake electric motor.'' Similarly, DOE concluded that the previous definition was ambiguous, particularly with regards to detaching the brake component. Therefore, in today's notice, DOE is proposing a new definition for ''non-integral brake electric motor'' that parallels its proposed definition for ''integral brake electric motor.'' DOE believes that the new definition is clearer because it relies solely on the placement of the brake and not what level of effort is needed to remove it. Additionally, DOE believes that the structure of its two definitions encompasses all brake motors by requiring them to meet one definition or the other. As detailed in the proposed regulations below, DOE's proposed definition for a ''non-integral brake electric motor'' is an electric motor containing a brake mechanism outside of the endshield, but not between the motor fan and endshield.

DOE believes that a definition for both integral and non-integral brake electric motors is necessary to distinguish between the two motor types because DOE may consider requiring different setup procedures for the two motor types and holding them to different efficiency levels.

In the electric motors preliminary analysis, DOE stated that it had preliminarily planned to include integral brake motors in the scope of expanded energy conservation. The Motor Coalition suggested that DOE continue to exclude these motors from coverage because of potential complications with testing. The group explained that there are no test standards for this motor type and that removing the brake components from the motor would affect the motor's performance and possibly leave the motor inoperable because of the integrated nature of the removed brake components. The Motor Coalition added that the efficiency losses from brake componentry would not be uniform across the industry. (Motor Coalition, EERE–2010–BT–STD–0027–0035 at p. 13)

When considering test procedures for both brake motor types, DOE considered all the recommendations from the Motor Coalition and the results of its own testing. DOE conducted its own testing to gather information on the feasibility of testing integral and non-integral brake motors. During its investigation of integral brake motors, DOE procured and tested two motors: one five-horsepower, four-pole, TEFC motor and one one-horsepower, four-pole, TEFC motor. For each of the motors, DOE performed three tests. Each motor was initially tested following IEEE Standard 112 (Test Method B) as the motor was received (i.e., no modifications to the brake components). Then, the test laboratory removed the brake components and retested the motor, again following IEEE Standard 112 (Test Method B). Finally, a third test was conducted after the test laboratory reattached the brake components. The results of this testing are shown in Table III–3.

TABLE III–3—RESULTS OF INTEGRAL BRAKE MOTOR TESTING

Motor type	Nameplate efficiency (percent)	Test 1 (percent)	Test 2 (percent)	Test 3 (percent)
Integral Brake Motor 1	87.5	86.4	87.2	86.0
Integral Brake Motor 2	82.5	77.4	80.3	78.0

For the two integral brake motors, there was no consistent amount of losses observed and attributable to the brake component. However, the decrease in motor losses that resulted when the brake was removed reached as high as 16 percent. While DOE anticipated that brake losses would vary based on motor horsepower and brake type, it appears that such losses are difficult to quantify in certain integral brake motor configurations. Additionally, while DOE found that the testing laboratory was able to reconnect the braking mechanisms after removal and to make the motor operable again after reconnecting the braking mechanism, there was a slight change in the performance of the two motors tested.

DOE also sought to investigate the feasibility of testing non-integral brake motors. DOE procured two non-integral brake motors, one five-horsepower, four-pole, TEFC motor and one 15-horsepower, four-pole, TEFC motor. When testing the motors, DOE's testing laboratory performed two tests on each motor. Initially, the motors were to be tested as they were received, following IEEE Standard 112 (Test Method B); however DOE's test facility faced a few complications. When attempting to test the five-horsepower motor, the test laboratory experienced complications when trying to conduct the no-load test. Because of the low voltage levels required for the no-load test, the braking mechanism would engage, stopping the test. Therefore, the testing laboratory spliced the electrical connections of the braking mechanism and connected the brake to an external power source. For the 15-horsepower motor, the brake had its own power connection and the test laboratory elected to connect the brake to an external power source (i.e., separate from what was supplied to the motor itself). For both motors, the test laboratory performed a second test in which the brake component was completely removed and the motor was tested according to IEEE Standard 112 (Test Method B) again. Finally, for the five-horsepower motor, the test laboratory performed a third test with the brake mechanism reattached.[17] The results of DOE's non-integral brake motor testing are shown below.

[17] This motor was originally thought to be an integral brake motor, which is why it was tested a third time.

[18] For this test, the brake would engage during the no-load test, thus the testing laboratory connected the brake to a separate power source for that test.

[19] For this test, the laboratory connected the brake to an external power source for the duration of the test.

TABLE III–4—RESULTS OF NON-INTEGRAL BRAKE MOTOR TESTING

Motor type	Nameplate efficiency (percent)	Test 1 (percent)	Test 2 (percent)	Test 3 (percent)
Non-Integral Brake Motor 1	87.5	[18] 87.3	87.7	87.1
Non-Integral Brake Motor 2	89.5	[19] 90.0	90.0	

DOE obtained much useful information from both rounds of non-integral brake motor testing. For the five-horsepower motor (''non-integral brake motor 1''), DOE obtained additional test data that supports the notion that removing and reattaching a brake mechanism to a motor could affect its performance. In this case, when the brake was reattached, the demonstrated efficiency of the motor decreased, albeit a minimal amount that could simply be due to testing variation. For the 15-horsepower motor (''non-integral brake motor 2'') DOE obtained the same tested efficiency when the brake was powered externally and when it was removed. In this instance, this shows that there was a negligible impact on friction and windage losses due to the brake mechanism. DOE understands that this could have occurred for several reasons. It could be because the significant impacts on losses from brakes come from the power consumed to keep the brake disengaged. It could also be that the design of this particular brake mechanism was an anomaly and most brake mechanisms would have a larger impact on friction and windage. Finally, it could be because the motor tested was a 15-horsepower motor and the friction and windage losses due to the brake may have been small relative to other losses in the motor.

In light of the test results of the 15 horsepower, non-integral brake motor, DOE sought to investigate testing brake motors with the brake powered separately. Therefore, DOE conducted a final set of tests for the other three motors. During this testing the brake component was attached, but powered by a source separate from the motor. This testing showed that powering the brake component separately resulted in demonstrated efficiencies equivalent to testing a motor with the brake component completely removed. Results are shown in the Table below.

TABLE III–5—COMPARISON OF REMOVING BRAKE AND POWERING BRAKE SEPARATELY

Motor tested	Tested efficiency with brake removed (percent)	Tested efficiency with brake powered separately (percent)
Integral Brake Motor 1	87.2	87.6
Integral Brake Motor 2	80.3	80.4
Non-Integral Brake Motor 1	87.7	87.7

As a result of its testing of integral and non-integral brake electric motors, DOE is proposing the same test instructions for both motors types in today's notice. DOE proposes to include instructions that would require manufacturers to keep the brake mechanism attached to the motor, but to power it externally while performing IEEE Standard 112 (Test Method B). DOE believes that this is the best approach because it allows the test laboratory to isolate the losses due to the motor, which includes the friction and windage produced by the rotating brake mechanism. DOE believes that powering the motor and the brake mechanism separately during testing would ensure that the power consumed to keep the brake mechanism disengaged is not counted against the motor's tested efficiency. The power consumed to keep the brake mechanism disengaged represents useful work performed by the motor and should not be construed as losses, but it should be measured and reported. DOE believes this information is pertinent for brake motor consumers who wish to understand the energy consumption of their motor. Furthermore, when conducting the testing, DOE's test laboratory was able to splice connections and externally power the brake on multiple integral and non-integral brake motors, so DOE preliminarily believes that this process would not be unduly burdensome.

DOE requests comments on its proposed definitions. Additionally, DOE requests comments on its proposed instructions for testing integral and non-integral brake electric motors.

3. Partial Electric Motors

Most general purpose electric motors have two endshields,[20] which support the bearings and shaft while also allowing the shaft to rotate during operation. DOE understands that ''partial electric motors,'' also called ''partial ¾ motors,'' or ''¾ motors,'' are motors that are sold without one or both endshields and the accompanying bearings. When partial electric motors are installed in the field, they are attached to another piece of equipment, such as a pump or gearbox. The equipment to which the motor is mated usually provides support for the shaft, thus allowing the shaft to rotate and drive its intended equipment. The equipment may also provide support for a shaft. When a partial electric motor is mated to another piece of equipment it is often referred to as an ''integral'' motor.[21] For example, an ''integral gearmotor'' is the combination of a partial electric motor mated to a gearbox. The gearbox provides a bearing or support structure that allows the shaft to rotate.

DOE is aware that there are many different industry terms used to describe a partial electric motor and now that it is considering covering special and definite purpose electric motors in light

[20] Endshields are metal plates on each end of the motor that house the motor's bearings and close off the internal components of the motor from the surrounding environment.

[21] DOE notes that integral brake motors are not considered integral or partial motors.

of the EISA 2007 changes to EPCA, DOE is proposing to define the term ''partial electric motor'' to ensure clarity. Additionally, because DOE considers integral gearmotors to be a subset of partial electric motors, this definition would also apply to integral gearmotors. Also, DOE does not wish to create confusion regarding the difference between a ''component set'' of an electric motor (discussed below in section III.G.2) and a ''partial electric motor.'' Therefore, as detailed in the proposed regulations below, today's proposed rule defines ''partial electric motor'' as an assembly of motor components necessitating the addition of no more than two endshields, including bearings, to create an operable motor. The ''operable motor'' means an electric motor engineered for performing in accordance with the applicable nameplate ratings.

DOE is aware that partial electric motors require modifications before they can be attached to a dynamometer for testing purposes. DOE received comments concerning potential testing difficulties for partial motors. The CDA indicated that a new test procedure may be required for partial motors and that DOE should consider developing a new test procedure for these and other motors. (CDA, No. 18 at p. 2) DOE has also received feedback suggesting that manufacturers could show compliance by testing a similar model that could more easily be attached to a dynamometer. (ASAP and NEMA, EERE–2010–BT–STD–0027–0012 at p. 9) In comments on the electric motors preliminary analysis, NEMA recommended that DOE require endshields to be installed prior to testing a partial motor. NEMA stated this would be an appropriate approach as long as the operating and cooling characteristics of a particular motor with endshields installed for testing is similar to how the partial motor would operate when connected to the driven equipment.[22] (NEMA, EERE–2010–BT–STD–0027–0054 at p 16)

DOE discussed NEMA's proposal and additional testing options with SMEs, testing laboratories, and motor industry representatives. Some interested parties suggested that the motor manufacturer could supply generic or ''dummy'' endplates equipped with standard ball bearings, which would allow for testing when connected to the partial electric motor. Alternatively, testing laboratories have considered machining the ''dummy'' endplates themselves, and supplying the properly sized deep-groove, ball bearings for the testing. Various testing laboratories have indicated the ability to perform this operation, but some added that they would require design criteria for the endplates from the original manufacturer of the motor. These laboratories noted that machining their own endplates could create motor performance variation between laboratories because it may impact airflow characteristics (and therefore thermal characteristics) of the motor.

DOE procured an integral gearmotor to determine the feasibility of testing partial electric motors. For this investigation, DOE purchased and tested one five-horsepower, four-pole, TEFC electric motor. DOE tested the motor twice, first with an endplate obtained from the manufacturer and second, with an endplate machined in-house by the testing laboratory. The results of these tests are shown below.

TABLE III–6—RESULTS OF PARTIAL ELECTRIC MOTOR TESTING

Motor type	Nameplate efficiency (percent)	Test 1 (percent)	Test 2 (percent)
Partial Electric Motor	81.0	83.5	82.9

As stated by testing laboratories, DOE found a variation in efficiency because of the endplate used during testing. In this case, DOE understands that the variation seen in tested efficiency was likely the result of varying the material used for the endplate. The endplate provided by the manufacturer was made of cast iron, while the endplate provided by the testing laboratory was machined from steel. The testing laboratory was not equipped to cast an iron endshield and replace the manufacturer's endshield with one of the same material. Additionally, DOE knows of no testing laboratory (other than a motor manufacturer), with such capability. DOE understands that the variance in the magnetic properties of steel likely produced small eddy currents in the endshield which increased heat and, therefore, losses within the motor.[23] Consequently, DOE believes that it is necessary to try and maintain a consistency in frame material, in order to prevent such variances in future testing.

At this time, because of the possible variance that DOE found through its testing, DOE is proposing that an endplate be provided by the manufacturer of the motor and test with that endplate in place. If bearings are also needed, the test laboratory should use what DOE views as a ''standard bearing''—a 6000-series, open, single-row, deep groove, radial ball bearing. DOE selected this set of specifications because it is common bearing type capable of horizontal operation. DOE requests comments on its proposed testing instructions for partial electric motors. In particular, DOE requests any data regarding the variation in tested efficiency likely to result from varying an endplate and its material.

E. Electric Motor Types Requiring Only Test Procedure Instructions

DOE is proposing to add additional instructions to the DOE test procedure that would affect a number of motor types for which DOE is analyzing new energy conservation standards. DOE is not proposing any definitions for these terms because DOE believes the terms are self-explanatory or already readily understood in the industry.

1. Electric Motors With Non-Standard Endshields or Flanges

Most electric motors are attached to a mounting surface by ''mounting feet'' or other hardware attached to the motor's housing, oftentimes on the bottom of the motor. However, some motors are mounted by directly attaching the motor's endshield, also called a faceplate, to a piece of driven equipment. If a motor's endshield protrudes forward to create a smooth mounting surface it may also be referred to as a flange, such as a Type D-flange or Type P-flange motor, as described in NEMA MG1–2009. Attaching a motor to the shaft of the driven equipment in this manner generally involves bolting the

[22] Driven equipment is machinery that is run or ''driven'' by an electric motor.

[23] Eddy currents are circulating currents induced in conductors (e.g., steel) by changing magnetic fields. They typically manifest themselves as heat, which can increase losses within an electric motor.

motor to the equipment through mounting holes in the flange or faceplate of the motor.

NEMA MG1–2009, paragraphs 1.63.1, 1.63.2, and 1.63.3 designate Type C face-mounting, Type D flange-mounting, and Type P flange-mounting motors, respectively. These definitions provide reference figures in NEMA MG1–2009, section I, part 4 titled ''Dimensions, Tolerances, and Mounting'' that contain specifications for the standard mounting configurations and dimensions for these three motor types. The dimensions designate standard locations and dimensions for mounting holes on the faceplates or flanges of the motors. DOE is aware that some electric motors may have special or customer-defined endshields, faceplates, or flanges with mounting-hole locations or other specifications that do not necessarily conform to NEMA MG1–2009, Figure 4–3, ''Letter Symbols for Type C Face-Mounting Foot or Footless Machines,'' Figure 4–4, ''Letter Symbols for Type D Flange-Mounting Foot or Footless Machines,'' or Figure 4–5, ''Letter Symbols for Vertical Machines.''

As previously explained DOE is considering setting energy conservation standards for special and definite purpose electric motors such as those motors with non-standard endshields. This change to the scope of energy conservation standards for electric motors means that the dimensions of a motor's endshields or flanges—neither of which impacts the efficiency or the ability to measure the efficiency of the motor—would no longer dictate whether a given motor would be required to meet energy conservation standards. Hence, DOE believes that an actual definition for such motors is unnecessary.

In evaluating the possibility of requiring these motor types to meet potential energy conservation standards, DOE is assessing whether these motors can be tested using non-standard flanges or endshields. DOE has received comments concerning the testing of these motor types. In response to the March 2011 RFI (76 FR 17577), ASAP and NEMA commented that motors with customer-defined endshields and flanged special motors should have their efficiency verified by testing a model motor with an equivalent electrical design that could more easily be attached to a dynamometer. (ASAP and NEMA, EERE–2010–BT–STD–0027–0020 at p. 4) NEMA added that testing motors with non-standard endshields may require a substitution of the special endshields with more conventional endshields. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 15)

DOE understands that it may not be possible to attach motors with non-standard endshields to a testing laboratory's dynamometer. If such situation arises and a test laboratory is unable to reconfigure the motor without removal of the endplate such that attachment to a dynamometer is possible, DOE proposes that the custom endshield be replaced with one that has standard (i.e., in compliance with NEMA MG1) dimensions and mounting configurations. As with partial electric motors, such a replacement must be obtained through the manufacturer and be constructed of the same material as the original endplate.

DOE requests comment on its preliminary decision not to propose a definition for these motor types. DOE also requests comments on its proposed instructions for testing motors with non-standard endshields or flanges.

2. Close-Coupled Pump Electric Motors and Electric Motors With Single or Double Shaft Extensions of Non-Standard Dimensions or Additions

Close-coupled pump motors are electric motors used in pump applications where the impeller is mounted directly on the motor shaft. Such motors are typically built with different shafts (usually longer) than generic general-purpose electric motors. Section I, part 4 of NEMA MG1–2009 and IEC Standard 60072–1 (1991) specify standard tolerances for shaft extensions, diameters, and keyseats that relate to the fit between the shaft and the device mounted to the shaft. However, sometimes manufacturers provide shafts with a special diameter, length, or design because of a customer's special application. In 2011, DOE proposed to clarify its treatment of these types of motors and included a table with allowable shaft variations. 76 FR 648, 671–72 (January 5, 2011) This table was intended to enumerate the deviations from standard shaft dimensions that DOE would allow while still considering the motor to be a general purpose motor subject to energy conservation standards.

The guidance was intended to identify variations in shaft dimensions for a motor that would be covered as a general purpose electric motor under EPCA. However, in view of the EISA 2007 and AEMTCA 2012 amendments, DOE has preliminarily decided to expand the scope of regulatory coverage beyond the initial scope set by EPCA prior to these two amendments. As such, DOE believes that a motor's shaft alone, no matter what its dimensions or type, is an insufficient reason to exclude a motor from having to satisfy energy conservation standards. Further, DOE believes that it is not necessary to explicitly define a close-coupled pump electric motor or an electric motor with a single or double shaft extension of non-standard dimensions or additions because whether a shaft is built within the shaft tolerances defined by NEMA and IEC is unambiguous.

In considering applying standards to these types of motors, DOE is assessing whether motors with non-standard shaft dimensions or additions can be tested using accepted and established procedures. DOE received feedback concerning the testing of these motor types during and after the October 18, 2010, framework document public meeting. NEMA and ASAP submitted a joint comment noting that DOE could allow testing of a ''similar model'' motor with a standard shaft to enable the motor to be more easily tested on a dynamometer. (NEMA and ASAP, EERE–2010–BT–STD–0027–0012 at p. 8) In its comments about the electric motors preliminary analysis, NEMA added that special couplings or adapters may be needed to test motors with special shaft extensions, but noted that a motor's shaft extension has little to no effect on its efficiency. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 14)

DOE sought to investigate the feasibility of using coupling adapters for motors with extended shafts or shafts of unique design. To do this, DOE procured a close-coupled pump motor with an extended shaft. When this motor was received, DOE's testing laboratory had no problems attaching the motor to its dynamometer. The use of an adapter in this case, was not needed. However, DOE also conferred with experts at its testing laboratory and learned that coupling adapters were needed for motors with extended shafts or shafts of unique design, which it had tested in the past. As such, DOE is not aware of any motor shaft design that has prevented DOE's test laboratory from performing a proper test according to IEEE 112 Test Method B. Therefore, at this time, DOE agrees with the above NEMA comment and is proposing to include instructions for special couplings or adapters. In other words, if a testing facility cannot attach a motor to its dynamometer because of the motor's shaft extension, that facility should use a coupling or adapter to mount and test the motor. DOE understands that a motor's shaft configuration has minimal, if any, impact on overall motor efficiency, and believes that this approach is technologically feasible and will not result in any distortion of a motor's inherent efficiency when tested.

DOE seeks comment on its tentative approach declining to propose a definition for motors with non-standard shaft dimensions or additions. DOE also requests comment on its proposed instructions for testing such motors.

3. Vertical Electric Motors

Although most electric motors are engineered to run while oriented horizontally, some operate in applications that require a vertical orientation. A horizontally oriented motor has a shaft parallel to the floor (or perpendicular to the force of gravity), while a vertically oriented motor has a shaft perpendicular to the floor (or parallel to the force of gravity). Relative to horizontal motors, vertical motors have different designs made with different construction techniques so that the electric motor can be operated in a vertical position. These different designs can include modifications to the mounting configuration, bearing design, and bearing lubrication (a discussion regarding bearings can be found in the following section, III.E.4). Additionally, vertical motors can come with various shaft configurations, including with a solid or hollow shaft. An example of a typical application requiring a vertical motor is a pump used in a well or a pit.

At this time, DOE is not proposing a definition for any terms related to vertical electric motors. DOE believes definitions are not needed because there is no industry confusion or ambiguity in whether an electric motor is a vertical electric motor. Furthermore, whether an electric motor has a solid shaft or a hollow shaft is also unambiguous and without need for DOE clarification. Although defining a vertically mounted electric motor does not appear necessary, DOE believes instructions detailing how to configure and mount a vertical motor for testing in a horizontal position, including the motor's orientation and shaft characteristics, would be helpful in ensuring a proper and consistent testing set-up.

EISA 2007 classified vertical solid-shaft motors as subtype II motors and required them to be tested in a ''horizontal configuration.'' (42 U.S.C. 6311(13)(B)(v)) NEMA, ASAP, and the Motor Coalition submitted comments agreeing with the EISA 2007 provision and noted that vertical motors cannot be tested on a standard dynamometer because most dynamometers are designed to operate in conjunction with horizontally oriented electric motors. (NEMA, EERE–2010–BT–STD–0027–0013 at p. 5; NEMA and ASAP, EERE–2010–BT–STD–0027–0012 at p. 3; Motor Coalition, EERE–2010–BT–STD–0027–0035 at pp. 18 and 30) DOE confirmed this assertion with its test laboratory and subject matter experts. In view of the statutory requirement and current dynamometer testing configuration limits, DOE is proposing to test motors, which are otherwise engineered to operate vertically, in a horizontal position when determining efficiency.

Another consideration is the shaft of a vertical motor and whether it is solid or hollow. If a vertical motor has a solid shaft, then no further adjustments are needed after considering orientation, unless the motor contains a special shaft. (See section III.E.2) If a vertical motor has a hollow shaft, (i.e., an empty cylinder that runs through the rotor and typically attaches internally to the end opposite the drive of the motor with a special coupling) then additional instructions would be needed prior to testing for efficiency.

After publishing the preliminary analysis, DOE did not receive any public comments suggesting that the testing of a vertical, hollow-shaft motor in a horizontal position would be technologically infeasible or unduly burdensome, especially when compared to the testing of a vertical solid-shaft motor. DOE understands that vertical hollow-shaft motors may not have a shaft extension at the drive end of the motor, which would be necessary for attaching or coupling the motor to a dynamometer for testing.

DOE conducted testing to gauge the feasibility of testing a vertical, hollow-shaft motor. For its investigation, DOE purchased a five-horsepower, two-pole, TEFC vertical motor with a hollow shaft. Upon receipt of the motor, the testing laboratory found that the motor's bearing construction was sufficient for horizontal operation and no replacement would be needed. However, the motor did require a shaft extension to be machined. After a solid shaft was constructed, it was inserted into the hollow shaft and attached via welding to the lip of the hollow shaft. The testing laboratory encountered no further problems and was able to properly test the motor according to IEEE Standard 112 (Test Method B).

After conducting this testing, DOE believes that, as long as the attached solid-shaft maintains sufficient clearance through the drive end of the motor to enable the motor to be attached to the dynamometer this is a feasible approach to testing vertical hollow-shaft motors. Aside from the addition of a shaft extension, DOE does not believe that testing a vertical hollow-shaft motor in a horizontal configuration would add undue testing burden when compared to testing a solid-shaft vertical motor.

In response to the March 2011 RFI, NEMA suggested that vertical motors rated 1–500 horsepower be tested according to section 6.4 of IEEE Standard 112 (Test Method B—*Input-output with segregation of losses and indirect measurement of stray-load loss*), if bearing construction permits; otherwise, it suggested testing vertical motors according to section 6.6 of IEEE Standard 112 (Test Method E—*Electric power measurement under load with segregation of losses and direct measurement of stray-load loss*), as specified in NEMA MG1 paragraph 12.58.1 ''Determination of Motor Efficiency and Losses.'' [24] (NEMA, EERE–2010–BT–STD–0027–0019 at p. 4)

DOE consulted testing laboratories about whether IEEE Standard 112 (Test Method E) would be an appropriate procedure to use when testing vertical motors. DOE understands that the primary difference between IEEE Standard 112 Test Method B and Test Method E is that Test Method E uses a different method to calculate stray-load loss relative to Test Method B. Test Method B measures motor output power and uses this number as part of the calculation for stray-load loss. However, Test Method E does not require the measurement of output power, and, therefore, uses a different measurement method to directly find the stray-load loss. By not requiring the measurement of output power, Test Method E can be conducted on motors installed in an area or in equipment that cannot be attached to a dynamometer. Although Test Method E may reduce some testing burden for vertical motors, DOE is concerned that Test Method E could produce results that are inconsistent and inaccurate relative to testing comparable motors under Test Method B. Therefore, DOE is declining to propose the use of Test Method E for vertical motors. However, DOE requests additional comments and test data that demonstrate any differences in the

[24] ''Efficiency and losses shall be determined in accordance with IEEE Std 112 or Canadian Standards Association Standard C390. The efficiency shall be determined at rated output, voltage, and frequency. Unless otherwise specified, horizontal polyphase, squirrel-cage medium motors rated 1 to 500 horsepower shall be tested by dynamometer (Method B) [Footnote: CSA Std C390 Method 1] as described in Section 6.4 of IEEE Std 112. Motor efficiency shall be calculated using form B of IEEE Std 112 or the equivalent C390 calculation procedure. Vertical motors of this horsepower range shall also be tested by Method B if bearing construction permits; otherwise they shall be tested by segregated losses (Method E) [Footnote: CSA Std Method 2] as described in Section 6.6 of IEEE Std 112, including direct measurement of stray-loss load.'' NEMA Standards Publication MG1–2009, *Motors and Generators,* paragraph 12.58.1

results of testing under Test Method E and Test Method B for the same basic model of vertical motor.

DOE requests comments on its preliminary decision not to propose any definitions for vertical motors. It also requests comments on its proposed instructions when addressing various construction differences between vertical and horizontal motors, in particular, test methods for vertical motors with hollow shafts.

4. Electric Motor Bearings

Electric motors usually employ antifriction bearings that are housed within the endshields to support the motor's shaft and provide a low-friction means for shaft rotation. Antifriction bearings contain rolling elements, which are the components inside the bearings that ''roll'' around the bearing housing and provide the reduced-friction means of rotation. Rolling elements can be spherical, cylindrical, conical, or other shapes. The design of the rolling element is selected based on the type and amount of force the shaft must be capable of withstanding. The two primary types of loads imposed on motor bearings are radial and thrust. Radial loads are so named because the load is applied along the radius of the shaft (i.e., perpendicular to the shaft's axis of rotation). Bearings may be subject to radial loads if the motor's shaft is horizontal to the floor (i.e., horizontally oriented). These bearings are called ''radial bearings.'' ''Thrust bearings'' are bearings capable of withstanding thrust loads, which are loads with forces parallel to the ''axis'' of the shaft (i.e., parallel to the shaft's axis of rotation) and may be encountered when the shaft is vertical to the floor (i.e., vertically oriented).

In addition to the type of force, bearings are also chosen based on the magnitude of the force they can withstand. While most applications use spherical rolling-elements, some motors employ cylindrical-shaped rolling-elements inside the bearings. These cylindrical-shaped rolling elements are called ''rollers,'' and this bearing type is referred to as a ''roller bearing.'' Roller bearings can withstand higher loads than spherical ball bearings because the cylindrically shaped rolling-element provides a larger contact area for transmitting forces. However, the larger contact area of the rolling element with the bearing housing also creates more friction and, therefore, may cause more losses during motor operation.

Regardless of the rolling element used, bearings must be lubricated with either grease or oil to further reduce friction and prevent wear on the bearings. Open or shielded bearing construction allows for the exchange of grease or oil during motor operation. Sealed bearings, unlike shielded or open bearings, do not allow the free exchange of grease or oil during operation. Sealed bearings incorporate close-fitting seals that prevent the exchange of oil or grease during the bearing's operational lifetime. Such bearings may be referred to as ''lubed-for-life'' bearings because the user purchases the bearings with the intention of replacing the bearing before it requires re-lubrication. Shielded bearings differ from open bearings in that shielded bearings contain a cover, called a ''shield,'' which allows the flow of oil or grease into the inner portions of the bearing casing, but restricts dirt or debris from contacting the rolling elements. Preventing dirt and debris from contacting the bearing prevents wear and increases the life of the bearing.

DOE also understands that certain vertical motors use oil-lubricated bearings rather than the grease-lubricated bearings that are typically found in horizontal motors. If a vertical motor contains an oil-lubricated system, problems can occur when the motor is reoriented into a horizontal position and attached to a dynamometer for testing. Because oil has a lower viscosity than grease, it could pool in the bottom of the now horizontally oriented (vertical motor) bearing.[25] Such pooling, or loss of proper lubrication to the bearings, could adversely affect the motor's performance, damage the motor, and distort the results of testing.

Because of the various construction and lubrication types, DOE understands that motors may contain bearings only capable of horizontal operation, vertical operation, or, in some limited cases, both horizontal and vertical operation. For those motors equipped with thrust bearings only capable of vertical orientation, DOE understands that reorienting the motor, as would be necessary for testing, could cause physical damage to the motor. For motors equipped with such bearings, DOE is proposing to add testing instructions that would require the testing laboratory to replace the thrust bearing with a ''standard bearing,'' which shall be interpreted as a 6000 series, open, single-row, deep groove, radial ball bearing, because that is the most common type of bearing employed on horizontally oriented motors. For any electric motor equipped with bearings that are capable of operating properly (i.e., without damaging the motor) when the motor is oriented horizontally, DOE is proposing that the motor should be tested as is, without replacing the bearings. DOE believes that this is the most appropriate approach because it will provide the truest representation of the energy use that will be experienced by the user.

In response to the preliminary analysis, DOE received comment specifically about testing electric motors with sleeve bearings. Sleeve bearings are another type of bearing that do not use typical rolling elements, but rather consist of a lubricated bushing, or ''sleeve,'' inside of which the motor shaft rotates. The shaft rotates on a film of oil or grease, which reduces friction during rotation. Sleeve bearings generally have a longer life than anti-friction ball bearings, but they are more expensive than anti-friction ball bearings for most horsepower ratings.[26] Both ASAP and NEMA asserted that a motor with sleeve bearings should have its efficiency verified by testing a motor of equivalent electrical design and which employs standard bearings.[27] (ASAP and NEMA, EERE–2010–BT–STD–0027–0020 at p. 4) However, NEMA later revised its position in separately submitted comments to the electric motors preliminary analysis public meeting. NEMA stated that further review of pertinent test data indicated that sleeve bearings do not significantly impact the efficiency of a motor, and that a motor having sleeve bearings is not sufficient reason to exclude it from meeting energy conservation standards. (NEMA, NEMA, EERE–2010–BT–STD–0027–0054 at p. 17) NEMA also commented that it is not aware of any reason that a motor cannot be tested with sleeve bearings, but that DOE should also provide the option to test sleeve bearing motors with the sleeve bearing swapped out for anti-friction ball bearings. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 17)

DOE separately consulted with testing laboratories, SMEs, and manufacturers and reviewed a pertinent technical paper.[28] As a result of this collective

[25] Viscosity is the measure of a liquid's resistivity to being deformed. An example of a material with high viscosity is molasses and an example of a material with low viscosity is water.

[26] William R. Finley and Mark. M Hodowanec. *Sleeve Vs. Anti-Friction Bearings: Selection of the Optimal Bearing for Induction Motors.* 2001. IEEE. USA.

[27] Neither NEMA nor ASAP elaborated on what ''standard'' bearings are. DOE is interpreting ''standard'' bearings to mean spherical, radial ball bearings, because this is the most common type of bearing used for general purpose, horizontally oriented motors.

[28] William R. Finley and Mark. M Hodowanec. *Sleeve Vs. Anti-Friction Bearings: Selection of the Optimal Bearing for Induction Motors.* 2001. IEEE. USA.

research, DOE has tentatively determined that sleeve bearings do not significantly degrade efficiency when compared to spherical, radial ball bearings. More importantly, DOE does not believe that it is any more difficult to attach a motor with sleeve bearings to a dynamometer than a standard, general purpose electric motor equipped with radial ball bearings. Additionally, DOE believes that swapping sleeve bearings with spherical, radial ball bearings may be time consuming and otherwise present unforeseen or undue difficulties because of the overall design of the motor that operates with the sleeve bearings. Motors that employ sleeve bearings have significantly different bearing-support configurations than motors that employ spherical, radial ball bearings, and DOE is not certain that sleeve bearings could be readily swapped with standard ball bearings without significant, costly motor alterations. Therefore, because it may be impracticable to swap them out with other bearings, DOE is proposing that motors with sleeve bearings be tested as-is and with the sleeve bearings installed.

DOE requests comment regarding its proposed approach to testing motors with thrust bearings only capable of vertical operation. DOE also requests comment on its proposed approach to testing motors with all types of bearings that are capable of horizontal operation, in particular, its proposed approach to testing motors with sleeve bearings.

F. General Clarification for Certain Electric Motor Types

For some electric motor types, DOE is neither proposing additions to the DOE test procedure nor proposing to define the motor types. However, DOE believes that some general clarification is needed for the following electric motor types to ensure that the regulations have sufficient clarity in detailing whether a particular motor is covered by DOE's regulations.

1. Electric Motors With Non-Standard Bases, Feet or Mounting Configurations

DOE has not yet regulated special or definite purpose motors, or general purpose motors with ''special bases or mounting feet,'' because of the limits prescribed by the previous statutory definition of ''electric motor.'' That definition included a variety of criteria such as ''foot-mounting'' and being built in accordance with NEMA ''T-frame'' dimensions, which all narrowed the scope of what comprised an electric motor under the statute. (See 42 U.S.C. 6311(13)(A) (1992)) As a result of EISA 2007 and related amendments that established energy conservation standards for two subtypes of general purpose electric motors (subtype I and subtype II), among other motor types, the statutory meaning of the term, ''general purpose motor'' was broadened to include, for example, ''footless motors.'' Similarly, because definite and special purpose motors now fall under the broad statutory heading of ''electric motors,'' DOE is considering whether to set standards for electric motors with non-standard bases, feet, or mounting configurations.

Part 4 of section I in NEMA MG1–2009 provides general standards for dimensions, tolerances, and mounting for all types of electric motors. In that section, figures 4–1 through 4–5 identify the letter symbols associated with specific dimensions of electric motors with various bases, feet, and mounting configurations. Accompanying these figures are tables throughout part 4 of section I that specify dimensions, explain how a particular dimension is measured and detail the applicable measurement tolerances. This collective information is used to standardize the dimensions associated with specific frame sizes, given a certain base, feet, or mounting configuration. The IEC provides similar information in its standard, IEC Standard 60072–1, ''Dimensions and output series for rotating electrical machines.'' Although the majority of motors are built within these specifications, DOE is aware that some motors may have feet, bases, or mounting configurations that do not necessarily conform to the industry standards. These are the motors—i.e. those not conforming to NEMA or IEC standards for bases, feet, or mounting configurations—that DOE is considering regulating.

DOE believes that a definition is not needed for this particular type of electric motor because whether a motor has a mounting base, feet, or configuration that is built within compliance of the standard dimensions laid out in NEMA MG1–2009 or IEC Standard 60072–1 is unambiguous. Also, DOE believes that additional instructions for these types of electric motors are not necessary because such mounting characteristics are not explicitly addressed either in IEEE Standard 112 (Test Method B) or CSA C390–10, other than how mounting conditions will affect the vibration of a motor under IEEE Standard 112, paragraph 9.6.2, ''Mounting configurations.''

In response to the March 2011 RFI, ASAP and NEMA asserted that a motor with a special base or mounting feet, as well as a motor of any mounting configuration, should have its efficiency verified by testing a model motor with an equivalent electrical design that could more easily be attached to a dynamometer. (ASAP and NEMA, EERE–2010–BT–STD–0027–0020 at p. 4)

DOE believes testing a ''similar model'' to show compliance would likely create difficulties in ensuring the accuracy and equivalence of claimed efficiency ratings. Additionally, DOE believes that testing motors with non-standard bases or mounting feet would not present an undue burden or insurmountable obstacle to testing. DOE understands that the test benches used for testing electric motors can have, for example, adjustable heights to accommodate the wide variety of motor sizes and mechanical configurations that commonly exist. Therefore, because the mounting feet will not necessarily affect how a motor is mounted to a dynamometer, but simply the positioning of the shaft extension, DOE believes non-standard mounting feet present no additional testing burdens. As was done for the vertical electric motor that DOE had tested and which did not have a standard horizontal mounting configuration, a testing laboratory would likely treat these motors as a typical general purpose electric motor and adjust the test bench as applicable for the unit under test.

Finally, DOE understands that an electric motor's mounting base, feet, or configuration will have no impact on its demonstrated efficiency. An electric motor's mounting base, feet, or configuration does not affect a motor's operating characteristics because this is a feature external to the core components of the motor. It is also a feature that will not impact friction and windage losses because this feature does not involve any rotating elements of the motor. An electric motor's mounting base, feet, or mounting configuration only affects how a motor is physically installed in a piece of equipment.

DOE seeks comment about its tentative decision declining to propose a definition for ''electric motors with non-standard base, feet, or mounting configurations.'' DOE also requests comment on any potential testing difficulties that may arise from testing these motor types and its preliminary decision not to issue any specific instructions related to testing such electric motors. Finally, DOE requests comment on its understanding that a motor's mounting base, feet, or configuration will not impact its demonstrated efficiency.

G. Electric Motor Types DOE Proposes Not To Regulate at This Time

1. Air-Over Electric Motor

Most enclosed electric motors are constructed with a fan attached to the shaft, typically on the end opposite the drive, as a means of providing cooling air flow over the surface of the motor frame. This air flow helps remove heat, which reduces the motor's operating temperature. The reduction in operating temperature prevents the motor from overheating during continuous duty operation and increases the life expectancy of the motor.[29] On the other hand, air-over electric motors do not have a factory-attached fan and, therefore, require a separate and external means of forcing air over the frame of the motor. Without an external means of cooling, an air-over electric motor could overheat during continuous operation and potentially degrade the motor's life. To prevent overheating, an air-over electric motor may, for example, operate in the airflow of an industrial fan it is driving, or it may operate in a ventilation shaft that provides constant airflow. The manufacturer typically specifies the required volume of air that must flow over the motor housing for the motor to operate at the proper temperature.

After the enactment of the EISA 2007 amendments, DOE performed independent research and consultation with manufacturers and SMEs. Through this work, DOE found that testing air-over electric motors would be extremely complex. IEEE Standard 112 (Test Method B) and CSA C390–10 do not provide standardized procedures for preparing an air-over electric motor for testing, which would otherwise require an external cooling apparatus. Additionally, DOE is not aware of any standard test procedures that provide guidance on how to test such motors. Test procedure guidance that would produce a consistent, repeatable test method would likely require testing laboratories to be capable of measuring the cubic airflow of an external cooling fan used to cool the motor during testing. This is a capability that most testing laboratories, at this time, do not have. Without the ability to measure airflow, one testing laboratory may provide more airflow to the motor than a different testing laboratory. Increasing or decreasing airflow between tests could impact the tested efficiency of the motor, which would provide inconsistent test results. Because of this difficulty, DOE has no plans to require energy conservation standards for air-over electric motors, making further test procedure changes unnecessary.

Although DOE does not plan to apply energy conservation standards to air-over electric motors, it is proposing to define them for clarity. DOE's proposed ''air-over electric motor'' definition is based on the NEMA MG1–2009 definition of a ''totally enclosed air-over machine,'' with some modification to that definition to include air-over electric motors with open frames. DOE believes air-over electric motors with either totally enclosed or open frame construction use the same methods for heat dissipation and, therefore, should be included in the same definition. DOE requests comment on the broad definition for air-over electric motor. As detailed in the proposed regulations below, today's proposed rule defines ''air-over electric motor'' as an electric motor designed to be cooled by a ventilating means external to, and not supplied with, the motor.

DOE believes that the difficulties associated with testing air-over electric motors—such as providing a standard flow of cooling air from an external source that provides a constant velocity under defined ambient temperature and barometric conditions over the motor—are insurmountable at this time. Therefore, DOE also requests comment on its tentative decision not to require air-over electric motors to meet energy conservation standards at this time given the difficulties in developing a consistent, repeatable test method for these motors.

2. Component Set of an Electric Motor

Electric motors are comprised of several primary components that include: a rotor, stator, stator windings, stator frame, two endshields, two bearings, and a shaft. A component set of an electric motor is comprised of any combination of these motor parts that does not form an operable motor.[30] For example, a component set may consist of a wound stator and rotor component sold without a stator housing, endshields, or shaft. These components may be sold with the intention of having the motor parts mounted inside a piece of equipment, with the equipment providing the necessary mounting and rotor attachments for the components to operate in a manner similar to a stand-alone electric motor. Component sets may also be sold with the intention of a third party using the components to construct a complete, stand-alone motor. In such cases, the end manufacturer that ''completes'' the motor's construction must certify that the motor meets any pertinent standards. (See 42 U.S.C. 6291(1)(10) (defining ''manufacture'' to include manufacture, produce, assemble, or import.)) This approach was supported by NEMA in its comments on the electric motors preliminary analysis. (NEMA, EERE–2010–BT–STD–0027–0054 at pp. 15–16)

DOE is aware of some confusion regarding what constitutes a ''component set'' of a motor, especially about the difference between a ''component set'' and a ''partial'' motor. DOE is aware that there is no definition for either of these motor types in NEMA MG1–2009 or any other standard. Therefore, DOE is proposing a definition for ''component set'' in view of comments from SMEs, NEMA, and other industry experts. Defining ''component set'' is necessary to differentiate it from a ''partial electric motor,'' addressed previously in this NOPR. DOE requests comment on its definition of ''component set.'' As detailed in the proposed regulations below, today's proposed rule defines ''component set'' as a combination of motor parts that require the addition of more than two endshields to create an operable motor. Under the definition, these parts may consist of any combination of a stator frame, wound stator, rotor, shaft, or endshields and the term ''operable motor'' means an electric motor engineered for performing in accordance with nameplate ratings.

DOE understands that a component set does not constitute a complete, or near-complete, motor that could be tested under IEEE Standard 112 (Test Method B) or CSA C390–10, because it would require major modifications before it can operate as a motor. In view of its examination of motor component sets, DOE understands that some of them would require the addition of costly and fundamental parts for the motor to be capable of continuous-duty operation, as would be required under either test procedure. The parts that would need to be added to the component set, such as a wound stator or rotor, are complex components that directly affect the performance of a motor and can only be provided by a motor manufacturer. Without the

[29] The temperature at which a motor operates is correlated to the motor's efficiency. Generally, as the operating temperature increases the efficiency decreases. Additionally, motor components wear our more slowly when operated at lower temperatures.

[30] A combination of wound stator, rotor, shaft, and stator housing that is missing only one or both endshields or bearings is not considered a component set because this particular combination of assembled components creates an operable motor. A set of motor parts missing one or both endshields or bearing components is considered a ''partial electric motor'' and is discussed earlier in this NOPR.

fundamental components, there is no motor. Therefore, DOE believes that a single testing laboratory would have insurmountable difficulty machining motor parts, assembling the parts into an operable machine, and testing the motor in a way that would be manageable, consistent, and repeatable by other testing laboratories. Because DOE is not aware of any test procedures or additional test procedure instructions that would accommodate the testing of a component set in a manageable, consistent, and repeatable manner, it is declining at this time to require them to satisfy any energy conservations standards.

DOE requests comment on its proposed definition for ''component set.'' DOE also requests comment on its tentative decision to not require component sets to meet any particular energy conservation standards.

3. Liquid-Cooled Electric Motor

While most electric motors are cooled by air and many use a fan attached to the shaft on the end opposite the drive to blow air over the surface of the motor to dissipate heat during the motor's operation, liquid-cooled electric motors rely on a special cooling apparatus that pumps liquid into and around the motor housing. The liquid is circulated around the motor frame to dissipate heat and prevent the motor from overheating during continuous-duty operation. A liquid-cooled electric motor may use different liquids or liquids at different temperatures, which could affect the operating temperature of the motor and, therefore, the efficiency of the motor. This variability could present testing consistency and reliability problems. Neither IEEE Standard 112 (Test Method B) nor CSA C390–10 provide a standardized methodology for testing the energy efficiency of a liquid-cooled electric motor. Additionally, as NEMA noted in its comments, these motors are typically used in space-constrained applications, such as mining applications, and require a high power density, which somewhat limits their efficiency potential. (NEMA, NEMA, EERE–2010–BT–STD–0027–0054 at p. 42) In view of these likely testing consistency problems, DOE does not intend to subject them to energy conservation standards at this time.

NEMA and ASAP commented in response to the October 15, 2010, energy conservation standards framework document, that greater clarification is needed with regard to liquid-cooled electric motors and how to differentiate them from immersible or submersible electric motors. (NEMA and ASAP, EERE–2010–BT–STD–0027–0012 at p. 9) DOE does not plan to subject these motors to energy conservation standards, but instead is proposing to define ''liquid-cooled electric motor'' to clarify its view of what motors fall within this term. DOE's proposed definition is based on the definition of a ''totally enclosed water-cooled machine'' found in paragraph 1.26.5 of NEMA MG1–2009. Further, DOE is proposing to remove ''totally enclosed'' from the definition to prevent any unintentional limitations of the definition due to frame construction. DOE also plans to replace the term ''water'' with ''liquid'' to cover the use of any type of liquid as a coolant. Finally, per comments from NEMA, DOE is proposing to modify the term ''water conductors'' to ''liquid-filled conductors'' to make it clear that the conductors are not made of liquid. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 35) As detailed in the proposed regulations below, today's proposed rule defines ''liquid-cooled electric motor'' as a motor that is cooled by circulating liquid with the liquid or liquid-filled conductors coming into direct contact with the machine parts.

DOE seeks comment on its proposed definition for ''liquid-cooled electric motor'' as well as its tentative decision not to cover these motors because of potential testing difficulties identified above, along with the testing variables that are introduced by an additional coolant system and pump apparatus. Nevertheless, DOE is open to comment about any test procedure standards or additional test procedure instructions that would take into account all such variables and allow this motor-type to be tested in a consistent, manageable, and repeatable manner.

4. Submersible Electric Motor

As previously addressed, most motors are not engineered for operation while under water. Any liquid inside a stator frame could impede rotor operation and corrode components of the motor. However, a submersible electric motor is capable of complete submersion in liquid without damaging the motor. A submersible electric motor uses special seals to prevent the ingress of liquid into its enclosure. Additionally, DOE understands that a submersible electric motor relies on the properties of the surrounding liquid to cool the motor during continuous-duty operation. That is, submersible electric motors are only capable of continuous duty operation while completely submerged in liquid, as NEMA clarified in its comments on the preliminary analysis. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 37) Consequently, as detailed in the proposed regulations below, today's proposed rule defines ''submersible electric motor'' as an electric motor designed for continuous operation only while submerged in liquid.

DOE does not plan to require submersible electric motors to meet energy conservation standards at this time. DOE believes that testing submersible electric motors would be extremely difficult because the motor must be submerged in a liquid to properly operate. After having discussions with manufacturers and testing laboratories, DOE is not aware of any industry test procedures or potential modifications to the procedures under 10 CFR 431.16 that could test a motor that relies on submersion in liquid for continuous-duty operation. Additionally DOE is not aware of any testing facilities that are capable of testing a submerged motor. Consequently, DOE has tentatively decided not to propose specific preparatory instructions for testing submersible electric motors. DOE is interested in whether there are facilities capable of conducting energy efficiency tests on submersible motors, along with any specific procedures that these facilities follow when attempting to rate the energy efficiency of this equipment.

DOE seeks comment about its proposed definition for ''submersible electric motor.'' Additionally, DOE seeks comment on its tentative decision not to cover these motors because of potential testing difficulties and the number of testing concerns, such as the availability of standard testing procedures and testing facilities. Nevertheless, DOE is open to comment about any test procedure standards or additional test procedure instructions that would facilitate the testing of submersible electric motors in a consistent, manageable, and repeatable manner.

5. Definite-Purpose Inverter-Fed Electric Motors

DOE considers two types of electric motors related to the use of inverters, those that are engineered to work only with an inverter and those that are capable of working with an inverter, but are otherwise capable of general, continuous-duty operation without an inverter. This section addresses the former type of electric motors. Inverter-capable electric motors are addressed in section II.C.4.

In its electric motors preliminary analysis TSD, DOE sought to clarify that, in its view, inverter-only motors were motors that can operate continuously only by means of an inverter drive. DOE also explained that

it preliminarily planned to continue to exclude these motors from energy conservation standards requirements, in large part because of the difficulties that were likely to arise from testing them.

NEMA agreed with DOE's preliminary approach to define such motors and not require them to meet energy conservation standards, but suggested a more specific definition of ''inverter-only motor,'' based on NEMA MG1 part 31, ''Definite-Purpose Inverter-Fed Polyphase Motors,'' in place of the one previously considered by DOE. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 35) DOE examined the suggested definition and is proposing to adopt it, with minor modifications. At this time, DOE is not proposing to require that a motor be marked as a ''definite-purpose, inverter-fed electric motor,'' but may consider such a requirement in the future. DOE believes the new definition is more precise than what it previously considered and understands that it is a term currently recognized and used in common industry parlance. As detailed in the proposed regulations below, today's proposed rule defines ''definite-purpose, inverter-fed electric motor'' as an electric motor that is designed for operation solely with an inverter, and is not intended for operation when directly connected to polyphase, sinusoidal line power.

Regarding testing a definite-purpose inverter-fed motor, NEMA asserted that the industry-based procedures, which have already been incorporated by reference in DOE's regulations, require that a tested motor be capable of across-the-line starting, but inverter-fed motors are incapable of meeting this requirement without the inverter. (See NEMA, at EERE–2010–BT–STD–0027–0054 at p. 35 and NEMA MG1–2009, part 31 at paragraph 31.4.3.1, which elaborates that an ''inverter-fed motor'' cannot perform across-the-line starting unless the motor is attached to the inverter.) Otherwise, DOE is not aware of an industry accepted test procedure that specifies at which speed or torque characteristics an inverter-fed motor should be tested. Furthermore, DOE does not believe it would be possible for it to develop a standardized test procedure for definite-purpose, inverter-fed electric motors on its own. Because inverters allow a motor to operate at a wide array of speeds for many different applications, there would be considerable difficulties in developing a single procedure that produced a fair representation of the actual energy used by all electric motors connected to an inverter in the field. Additionally, a single motor design may be paired with a wide variety of inverters, so properly selecting an inverter to use for the test such that an accurate representation of efficiency is obtained would prove extremely difficult. Therefore, even if DOE intended to regulate such motors, testing them could be extremely challenging using the currently accepted industry test procedures.

DOE requests comment on its proposed definition for ''definite-purpose, inverter-fed electric motors'' and its preliminary decision to exclude such motors from any expanded energy conservation standards for electric motors.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *www.gc.doe.gov.*

As described in the preamble, today's proposal presents additional test procedure set-up clarifications for motors currently subject to Federal energy conservation standards, new test procedure set-up and test procedures for motors not currently subject to Federal energy conservation standards, and additional clarifications of definitions for certain key terms to aid manufacturers in better understanding DOE's regulations. All of the proposals are consistent with current industry practices and, once adopted and compliance is required, should be used for making representations of energy-efficiency of those covered electric motors and for certifying compliance to Federal energy conservation standards. DOE certified to the Office of Advocacy of the Small Business Administration (SBA) that the proposed test procedures for electric motors would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

To estimate the number of small businesses impacted by the rule, DOE considered the size standards for a small business listed by the North American Industry Classification System (NAICS) code and description under 13 CFR 121.201. To be considered a small business, a manufacturer of electric motors and its affiliates may employ a maximum of 1,000 employees. DOE estimates that there are approximately 30 domestic motor manufacturers that manufacture electric motors covered by EPCA, and no more than 13 of these manufacturers are small businesses employing a maximum of 1,000 employees. The number of motor manufacturers, including the number of manufacturers qualifying as small businesses, was estimated based on interviews with motor manufacturers and publicly available data.

To determine the anticipated economic impact of the testing requirements on small manufacturers, DOE compared its proposal to current industry practices regarding testing procedures and representations for energy efficiency along with those steps DOE has taken in the design of the rule to minimize the testing burden on manufacturers. For motors that are currently subject to Federal standards, today's procedures are largely clarifications and would not change the underlying DOE test procedure and methodologies currently being employed by industry to rate and certify to the Department compliance with Federal standards.

If DOE ultimately adopts the additional definitions in this rulemaking extending the existing test procedures to motors that are not currently subject to Federal energy conservation standards, manufacturers would only need to use the testing set-up instructions, testing procedures, and rating procedures if a manufacturer elected to make voluntary representations of energy-efficiency of his or her basic models once compliance with the final test procedure was required. To better understand how the proposal would impact small

manufacturers of electric motors, DOE reviewed current industry practice regarding the representations of energy efficiency currently made for motors not currently subject to energy conservation standards and how the proposal may impact current industry practice. Specifically, DOE's test procedures would require that those manufacturers of motors not currently subject to standards who choose to make public representations of efficiency to comply with the proposed methods. DOE's rule would not require manufacturers who do not currently make voluntary representations to then begin making public representations of efficiency.

DOE researched the catalogs and Web sites of the 13 identified small manufacturers and found that only four of the small manufacturers clearly list efficiency ratings for their equipment in public disclosures. The remaining manufacturers either build custom products, which would not be subject to the proposal, or do not list energy efficiency in their motor specifications, in part because it is not required. For the manufacturers that currently do not make any public representations of energy efficiency of their motors, DOE does not believe the proposal would impact the current behavior of those manufacturers that do not elect to make voluntary representations. DOE does not anticipate any burden accruing to these manufacturers unless the agency was to consider and set energy conservation standards for those additional electric motor types. Of the four manufacturers that currently elect to make voluntary representations of the electric motor efficiency, DOE believes those manufacturers will be minimally impacted because they are already basing those representations on commonly used industry standards, which are the same testing procedures that are contained within DOE's proposals. DOE does not have any reason to believe that the test set-up clarifications proposed for adoption would have any significant impact on the current practice of these four manufacturers.

In view of the foregoing, DOE certifies that today's proposal would not impose significant economic impacts on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has provided its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of electric motors must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for electric motors, including any amendments adopted for those test procedures. The collection-of-information requirement for electric motors certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400 that expires February 13, 2014. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for electric motors. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney

General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.gc.doe.gov.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that today's proposal contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposal would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's proposal to amend the test procedure for measuring the energy efficiency of electric motors is not a significant regulatory action under Executive Order 12866. Moreover, it would not, if adopted, have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The rule proposed in this notice incorporates portions of the following commercial standard as specified: National Electrical Manufacturers Association (NEMA) Standards Publication MG1–2009 Section I (Part 4), Section II and Section II (Part 12). Although other portions of NEMA MG1–2009 are already incorporated by reference into DOE regulations, portions of Section I (Part 4) and Section II (Part 12) have yet to be incorporated. DOE has evaluated these provisions and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC about the impact of this test procedure on competition.

V. Public Participation

a. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.*

Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting

Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptop computers into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptop computers, or allow an extra 45 minutes for security screening. Persons can also participate in the public meeting via webinar. For more information, refer to the Public Participation section near the end of this notice.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/74.* Participants are responsible for ensuring their systems are compatible with the webinar software.

b. Procedure for Submitting Prepared General Statements For Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

c. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

d. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via *www.regulations.gov.* The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a compact disk (CD), if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free

of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

e. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the decision to incorporate definitions for NEMA Design A and NEMA Design C motors based on the NEMA MG1–2009 definitions of these motor designs.

2. DOE requests comment on the proposed definitions for IEC Design N and H motors.

3. DOE seeks comment on its proposed definition for electric motors with moisture resistant windings and electric motors with sealed windings and its preliminary decision to not propose additional testing instructions for these motors types.

4. DOE requests comments on its proposed definition for inverter-capable electric motors and its decision not to provide any test procedure instructions for this motor type.

5. DOE requests comments on its proposed definition and preliminary decision not to propose any clarifying testing instructions for TENV electric motors.

6. DOE requests comments on its proposed definition of integral brake electric motor and its preliminary decision to include them in the scope of these test procedures.

7. DOE requests comments on its preliminary decision to test integral brake electric motors and non-integral brake electric motors without disassembly but, rather, with their brake components powered externally.

8. DOE requests comments concerning its proposed definition for immersible electric motor, especially with regards to differentiating this motor type from liquid-cooled electric and submersible electric motors.

9. DOE invites comment on its proposed test procedure instructions for immersible electric motors, in particular, the proposal to allow for a maximum run-in period of 10 hours prior to testing according to IEEE Standard 112 Test Method B.

10. DOE requests comment on its preliminary decision not to propose a definition for electric motors with non-standard endshields or bases

11. DOE invites comment on its proposed instructions for testing electric motors with non-standard endshields or flanges.

12. DOE seeks comment on the decision to not propose a definition for electric motors with non-standard shaft dimensions or additions.

13. DOE requests comment on it proposed instructions for testing motors with non-standard shaft dimensions or additions.

14. DOE seeks comment regarding its decision not to propose a definition for electric motors with non-standard base, feet, or mounting configurations.

15. DOE requests comment on its instructions for testing electric motors with non-standard base, feet, or mounting configurations.

16. DOE seeks comment on any other testing difficulties that may arise from testing electric motors with non-standard base, feet, or mounting configurations.

17. DOE requests comment regarding its proposed approach to testing electric motors with bearings capable of horizontal orientation. DOE also requests comment on its proposed approach to testing electric motors with bearings not capable of horizontal orientation.

18. DOE requests comments on its preliminary decision not to propose any definitions for vertical motors.

19. DOE seeks comments on its proposed instructions for dealing with the various construction differences found between vertical and horizontal motors.

20. DOE requests comment on its decision not to propose additional test procedure clarifications for motors with sleeve bearings or a definition for these motor types.

21. DOE requests comment regarding the effect of sleeve bearings on a motor's tested efficiency.

22. DOE requests comment on its proposed definition for air-over electric motor, and the decision to include both open and enclosed frame motors under the same definition.

23. DOE requests comment on the decision to not require air-over electric motors to meet energy conservation standards at this time.

24. DOE requests comment on its proposed definition of component set of an electric motor.

25. DOE is open to comment on its tentative decision to not require component sets of electric motors to meet any particular energy conservation standards.

26. DOE seeks feedback on its proposed definition for liquid-cooled electric motors.

27. DOE seeks comment on its tentative decision not to cover liquid-cooled electric motors, primarily because of the testing difficulties encountered when testing them, namely the number of testing variables that are introduced by the additional coolant system and pump apparatus.

28. DOE is open to comment regarding any test procedure standards or additional test procedure guidance language that would take into account all variables involved in testing liquid-cooled motors and allows this motor type to be tested in a consistent, manageable, and repeatable manner.

29. DOE requests comment on its proposed definition of submersible electric motor.

30. DOE requests comment on whether it is correct that there are no test facilities capable of conducting performance tests on submersible electric motors.

31. DOE requests comment on its proposed definition for definite-purpose, inverter-fed electric motors.

32. DOE seeks comment on its preliminary decision to continue to not require definite-purpose, inverter-fed electric motors to meet any expanded energy conservation standards for electric motors.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practices and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 19, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 431 of chapter II of title 10, Code of Federal Regulations, as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.12 is amended by:

■ a. Removing the reserved terms ''Fire pump motors'' and ''NEMA design B general purpose electric motor;'' and

■ b. Adding in alphabetical order, definitions for: ''air-over electric motor,'' ''component set,'' ''definite-purpose, inverter-fed electric motor,'' ''electric motor with moisture resistant windings,'' ''electric motor with sealed windings,'' ''IEC Design H motor,'' ''IEC Design N motor,'' ''immersible electric motor,'' ''integral brake electric motor,'' ''inverter-capable electric motor,'' ''liquid-cooled electric motor,'' ''NEMA Design A motor,'' ''NEMA Design C motor,'' ''non-integral brake electric motor,'' ''partial electric motor,'' ''submersible electric motor,'' ''totally enclosed non-ventilated (TENV) electric motor.''

The additions read as follows:

§ 431.12 Definitions.

* * * * *

Air-over electric motor means an electric motor designed to be cooled by a ventilating means external to, and not supplied with, the motor.

* * * * *

Component set means a combination of motor parts that require the addition of more than two endshields to create an operable motor. These parts may consist of any combination of a stator frame, wound stator, rotor, shaft, or endshields. For the purpose of this definition, the term ''operable motor'' means an electric motor engineered for performing in accordance with nameplate ratings.

* * * * *

Definite-purpose, inverter-fed electric motor means an electric motor that is designed for operation solely with an inverter, and is not intended for operation when directly connected to polyphase, sinusoidal line power.

* * * * *

Electric motor with moisture resistant windings means an electric motor that is engineered for passing the conformance test for moisture resistance described in NEMA MG1–2009, paragraph 12.63, (incorporated by reference, see § 431.15) as demonstrated on a representative sample or prototype.

Electric motor with sealed windings means an electric motor that is engineered for passing the conformance test for water resistance described in NEMA MG1–2009, paragraph 12.62, (incorporated by reference, see § 431.15) as demonstrated on a representative sample or prototype.

* * * * *

IEC Design H motor means an electric motor that

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is intended for direct-on-line starting (as demonstrated by the motor's ability to operate without an inverter)

(4) Has 4, 6, or 8 poles;

(5) Is rated from 0.4 kW to 160 kW at a frequency of 60 Hz; and

(6) Conforms to sections 8.1, 8.2, and 8.3 of the IEC 60034–12 edition 2.1 (incorporated by reference, see § 431.15) requirements for starting torque, locked rotor apparent power, and starting.

IEC Design N motor means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is intended for direct-on-line starting (as demonstrated by the motor's ability to operate without an inverter);

(4) Has 2, 4, 6, or 8 poles;

(5) Is rated from 0.4 kW to 1600 kW; and

(6) Conforms to sections 6.1, 6.2, and 6.3 of the IEC 60034–12 edition 2.1 (incorporated by reference, see § 431.15) requirements for torque characteristics, locked rotor apparent power, and starting.

* * * * *

Immersible electric motor means an electric motor primarily designed to operate continuously in free-air, but is also capable of withstanding complete immersion in liquid for a continuous period of no less than 30 minutes.

Integral brake electric motor means an electric motor containing a brake mechanism either inside of the motor endshield or between the motor fan and endshield.

Inverter-capable electric motor means an electric motor designed to be directly connected to polyphase, sinusoidal line power, but that is also capable of continuous operation on an inverter drive over a limited speed range and associated load.

Liquid-cooled electric motor means a motor that is cooled by circulating liquid with the liquid or liquid-filled conductors coming into direct contact with the machine parts.

* * * * *

NEMA Design A motor means a squirrel-cage motor that:

(1) Is Designed to withstand full-voltage starting and developing locked-rotor torque as shown in NEMA MG1–2009, paragraph 12.38 (incorporated by reference, see § 431.15);

(2) Has pull-up torque as shown in NEMA MG1–2009, paragraph 12.40;

(3) Has breakdown torque as shown in NEMA MG1–2009, paragraph 12.39;

(4) Has a locked-rotor current higher than the values shown in NEMA MG1–2009, paragraph 12.35.1 for 60 hertz and NEMA MG1–2009, paragraph 12.35.2 for 50 hertz; and

(5) Has a slip at rated load of less than 5 percent for motors with fewer than 10 poles.

* * * * *

NEMA Design C motor means a squirrel-cage motor that:

1. Is Designed to withstand full-voltage starting and developing locked-rotor torque for high-torque applications up to the values shown in NEMA MG1–2009, paragraph 12.38 (incorporated by reference, see § 431.15);

2. Has pull-up torque as shown in NEMA MG1–2009, paragraph 12.40;

3. Has breakdown torque up to the values shown in NEMA MG1–2009, paragraph 12.39;

4. Has a locked-rotor current not to exceed the values shown in NEMA

MG1–2009, paragraphs 12.35.1 for 60 hertz and 12.35.2 for 50 hertz; and

5. Has a slip at rated load of less than 5 percent.

Non-integral brake electric motor means an electric motor containing a brake mechanism outside of the endshield, but not between the motor fan and endshield.

* * * * *

Partial electric motor means an assembly of motor components necessitating the addition of no more than two endshields, including bearings, to create an operable motor. For the purpose of this definition, the term ''operable motor'' means an electric motor engineered for performing in accordance with the applicable nameplate ratings.

* * * * *

Submersible electric motor means an electric motor designed for continuous operation only while submerged in liquid.

* * * * *

Totally enclosed non-ventilated (TENV) electric motor means an electric motor that is built in a frame-surface cooled, totally enclosed configuration that is designed and equipped to be cooled only by free convection.

■ 3. Appendix B to Subpart B of Part 431 is amended by adding an introductory note and section 4 to read as follows:

Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full-Load Efficiency of Electric Motors

Note: Any representation made after [date 180 days after publication of the final rule will be inserted here] related to special and definite purpose motor types for which definitions are provided at § 431.12, or for which specific testing procedures are provided in this appendix, must be based upon results generated under this test procedure. Upon the compliance date(s) of any energy conservation standard(s) for special and definite purpose motor types, use of the applicable provisions of this test procedure to demonstrate compliance with the energy conservation standard will also be required.

Any representation, including demonstrations of compliance, related to general purpose electric motors (subtype I or II) made after [date 180 days after publication of the final rule will be inserted here] must be based upon results generated under this test procedure.

* * * * *

4. *Procedures for the Testing of Certain Electric Motor Types.*

Prior to testing according to IEEE Standard 112 (Test Method B) or CSA C390–10 (incorporated by reference, see § 431.15), each basic model of the electric motor types listed below must be prepared in accordance with the instructions of this section to ensure consistent test results. These steps are designed to enable a motor to be attached to a dynamometer and run continuously for testing purposes. For the purposes of this appendix, a ''standard bearing'' is a 6000 series, open, single-row, deep groove, radial ball bearing.

4.1 Close-Coupled Pump Electric Motors and Electric Motors with Single or Double Shaft Extensions of Non-Standard Dimensions or Additions:

To attach the unit under test to a dynamometer, close-coupled pump electric motors and electric motors with single or double shaft extensions of non-standard dimensions or additions must be tested using a special coupling adapter.

4.2 Electric Motors with Non-Standard Endshields or Flanges:

If it is not possible to connect the electric motor to a dynamometer without removing the endplate, the testing laboratory shall replace the non-standard endshield or flange with an endshield or flange meeting NEMA or IEC specifications. The NEMA specifications are found in NEMA MG–1 (2009) in Section I, Part 4, paragraphs 4.1, 4.2.1, 4.2.2, 4.4.1, 4.4.2, 4.4.4, 4.4.5, and 4.4.6, Figures 4–1, 4–2, 4–3, 4–4, and 4–5, and Table 4–2 (incorporated by reference, see § 431.15). The IEC specifications are found in IEC 60072–1 (1991) (incorporated by reference, see § 431.15). If this is necessary, the replacement endshield or flange shall be obtained through the manufacturer, either by request or purchased as a replacement part; any such replacement endshield or flange must be constructed of the same material as the original endplate.

4.3 Immersible Electric Motors and Electric Motors with Contact Seals:

Immersible electric motors shall be tested with all contact seals installed as the motor is received. A manufacturer or test laboratory may run the electric motor being tested for a period of no more than 10 hours in order to break in the contact seals prior to testing. For immersible motors built in a totally enclosed blower cooled construction, the smaller, cooling motor shall be powered by a source separate from the source powering the electric motor under test.

4.4 Integral Brake Electric Motors:

Integral brake electric motors shall be tested with the integral brake component powered by a source separate from the source powering the electric motor under test. Additionally, for any 10 minute period during the test and while the brake is being powered such that it remains disengaged from the motor shaft, record the power consumed (i.e., watts).

4.5 Non-Integral Brake Electric Motors:

Non-integral brake electric motors shall be tested with the non-integral brake component powered by a source separate from the source powering the electric motor under test. Additionally, for any 10 minute period during the test and while the brake is being powered such that it remains disengaged from the motor shaft, record the power consumed (i.e., watts).

4.6 Partial Electric Motors:

Partial electric motors shall be disconnected from their mated piece of equipment. After disconnection from the equipment, standard bearings and/or endshields shall be added to the motor, such that it is capable of operation. If an endshield is necessary, an endshield meeting NEMA or IEC specifications shall be obtained through the manufacturer, either by request or purchased as a replacement part.

4.7 Vertical Electric Motors and Electric Motors with Bearings Incapable of Horizontal Operation:

Vertical electric motors and electric motors with thrust bearings shall be tested in a horizontal configuration. If the unit under test cannot be reoriented horizontally due to its bearing construction, the electric motor's bearings shall be removed and replaced with standard bearings. If the unit under test contains oil-lubricated bearings, its bearings shall be removed and replaced with standard bearings. Finally, if the unit under test contains a hollow-shaft, a solid-shaft shall be inserted, bolted to the non-drive end of the motor and welded on the drive end. Enough clearance shall be maintained such that attachment to a dynamometer is possible.

[FR Doc. 2013–15132 Filed 6–25–13; 8:45 am]

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Part III

Department of Agriculture

Federal Crop Insurance Corporation

7 CFR Part 407

Area Risk Protection Insurance Regulations and Area Risk Protection Insurance Crop Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 407

[Docket No. FCIC–11–0002]

RIN 0563–AC25

Area Risk Protection Insurance Regulations and Area Risk Protection Insurance Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Area Risk Protection Insurance (ARPI) Basic Provisions, ARPI Barley Crop Insurance Provisions, ARPI Corn Crop Insurance Provisions, ARPI Cotton Crop Insurance Provisions, ARPI Forage Crop Insurance Provisions, ARPI Grain Sorghum Crop Insurance Provisions, ARPI Peanut Crop Insurance Provisions, ARPI Soybean Crop Insurance Provisions, and ARPI Wheat Crop Insurance Provisions to provide area yield protection and area revenue protection. These provisions will replace the Group Risk Plan (GRP) provisions in 7 CFR part 407, which includes the: GRP Basic Provisions, GRP Barley Crop Provisions, GRP Corn Crop Provisions, GRP Cotton Crop Provisions, GRP Forage Crop Provisions, GRP Peanut Crop Provisions, GRP Sorghum Crop Provisions, GRP Soybean Crop Provisions, and GRP Wheat Crop Provisions. The ARPI provisions will also replace the Group Risk Income Protection (GRIP) Basic Provisions, the GRIP Crop Provisions, and the GRIP-Harvest Revenue Option (GRIP–HRO). The GRP and GRIP plans of insurance will no longer be available. The intended effect of this action is to offer producers a choice of Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, or Area Yield Protection, all within one Basic Provision and the applicable Crop Provisions. This will reduce the amount of information producers must read to determine the best risk management tool for their operation and will improve the provisions to better meet the needs of insureds. The changes will apply for the 2014 and succeeding crop years.

DATES: This rule is effective June 26, 2013.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO, 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Benefit-Cost Analysis

A Benefit-Cost Analysis has been completed and a summary is shown below; the full analysis may be viewed on *http://www.regulations.gov*. In summary, the analysis finds that changes in the rule will have an expected savings of $705,722 to the government in administration of the Federal Crop Insurance program; a cost of slightly over $488,255 to producers; and a cost of slightly over $1 million to insurance providers.

Combining area yield protection (protection for production losses only) and area revenue protection (protection against loss of revenue caused by low prices, low yields, or a combination of both) within one Basic Provisions and the applicable Crop Provisions will minimize the quantity of documents needed to describe the contract between the insured and the insurance provider. An insured benefits because he or she will not receive several copies of largely duplicative material as part of the insurance contracts for crops insured under different plans of insurance. Insurance providers benefit because there is no need to maintain inventories of similar materials. Handling, storing and mailing costs are reduced to the extent that duplication of Basic or Crop Provisions is eliminated. Benefits accrue due to avoided costs (resources employed for duplicative effort), which are intangible in nature. These changes will increase the efficiency of the insurance provider by eliminating the need to maintain and track separate forms, and by eliminating the potential for providing an incorrect set of documents to an insured by inadvertent error.

The GRIP plan of insurance currently uses a market-price discovery method to determine prices. This rule uses this same method for determining prices for both area revenue protection and area yield protection. The benefits of this action primarily accrue to FCIC, which will no longer be required to make two estimates of the respective market price for these crops. Insurance providers benefit because they no longer will be required to process two releases of the expected market price for a crop year. Insureds also benefit because the price at which they may insure the crops included under GRP yield protection should more closely approximate the market value of any loss in yield that is subject to an indemnity, and insureds will not have to analyze potential differences in price in deciding between area revenue or area yield protection. There are essentially no direct costs for this change since the market-price price discovery mechanism already exists and is in use for the GRIP plan of insurance. All required data is available and similar calculations are currently being made.

These changes will simplify administration of the crop insurance program, reduce the quantity of documents and electronic materials prepared and distributed, better define the terms of coverage, provide greater clarity, and reduce the potential for waste, fraud, and abuse.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), an information collection package was submitted to OMB for review at the time the proposed rule was published and assigned OMB Control number 0563–0083. The information collection and recordkeeping requirements contained in this final rule will not be effective until the final information collection package is approved by OMB.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal

governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (Act) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes the Area Risk Protection Insurance (ARPI) Basic Provisions, ARPI Corn Crop Insurance Provisions, ARPI Cotton Crop Insurance Provisions, ARPI Forage Crop Insurance Provisions, ARPI Grain Sorghum Crop Insurance Provisions, ARPI Peanut Crop Insurance Provisions, ARPI Soybean Crop Insurance Provisions, ARPI Wheat Crop Provisions to provide area yield protection and area revenue protection in one policy and to make other changes that were published by FCIC on July 22, 2011, as a notice of proposed rulemaking in the **Federal Register** at 76 FR 44200–44224. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 384 comments were received from 48 commenters. The commenters were producers, insurance agents, insurance providers, an insurance service organization, grower associations, universities, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are listed below (under applicable subject headings) identifying issues and concerns, and the changes made, if any, to address the comments.

Background

1. Proposed Policy

Comment: A commenter stated, with respect to proposed policy changes, it is difficult to comment on proposed provisions that include references to information in the Special Provisions and/or actuarial documents not included in the proposal. The commenter recommended that when FCIC releases policy revisions for public examination, FCIC should include a sample of the anticipated Special Provisions/actuarial documents for review and comment. Without such information, interested parties cannot offer comments as meaningful as they otherwise would.

Response: FCIC understands the commenters concerns about having additional information to reference to the proposed provisions. However, these statements provide information or exceptions to the provisions in the Basic Provisions or Crop Provisions that can vary by state and county. Therefore, it would be impractical to include all of these statements in the rule. Further, this rule is a combination of the various area plans of insurance so the Special Provision and actuarial document statements will be similar.

Comment: A commenter expressed their appreciation for the opportunity to comment on the proposed rule to replace GRP and GRIP with ARPI. The commenter expressed agreement with combining these two policies and stated that it made sense by reducing paperwork and labor.

Response: FCIC appreciates the support for its efforts and agrees combining GRP and GRIP into one program will be beneficial.

Comment: Several commenters stated their appreciation of FCIC's efforts to provide an area-wide crop insurance product for the major crops. The commenters also stated FCIC's decision in putting yield and revenue protection into one basic insurance policy was a wise use of resources. However, the commenters expressed concern about ARPI not being offered in all areas where the crops insured under ARPI may be grown. One commenter would like ARPI available for all the major crops grown in Louisiana and have it

available for all parishes. The commenter suggested if sufficient information is not available to offer the policy in a given parish, then the area should be expanded to multiple parishes or to the crop reporting districts to provide coverage.

Response: FCIC appreciates the support for its efforts. ARPI was written to provide FCIC with the flexibility to modify how it makes area plan offers in the future including on a basis beyond a single county, parish, etc. FCIC will continue to evaluate and consider where and how it expands area plans of insurance.

2. Price Determinations

Comment: Several comments were received regarding the pricing for the new area plans of insurance in the Crop Exchange Price Provisions for ARPI (CEPP–ARPI). A commenter noted the new plans of insurance would use futures contract prices from commodity exchange markets, which are well studied and established as unbiased and efficient in utilizing all the information available to market participants. The commenter further noted a single projected price would be used in all three new area plans of insurance. Finally, the commenter noted the new area plans of insurance would use the same insurance prices for individual plans of insurance corresponding to the same sales closing date. All these changes regarding insurance prices should help simplify and streamline the program. The commenter would encourage FCIC to make use of the same CEPP for area and individual plans of insurance instead of maintaining two separate CEPPs, as this will eliminate the potential for errors or discrepancies of maintaining two CEPPs. Another commenter stated matching the price discovery period for area and individual plans for the same crop is a good idea and creates less confusion. Another commenter recommended adding Alabama, Florida, South Carolina, and Virginia to the list of states with specific dates in determining the cotton projected and harvest price.

Response: The CEPP–ARPI was provided for comment as a courtesy to the public and is not a part of the regulation published in the Code of Federal Regulations. It is not subject to the formal notice and comment rulemaking process, and as a result, FCIC is not publishing responses to all of these comments in the final rule. The proposed CEPP–ARPI allowed for a single projected price for all area plans of insurance but not the same price by crop between the area plans and individual plans of insurance. FCIC agrees with the commenters that the use of one CEPP to establish a common crop price between all plans of insurance would be more efficient and less confusing. Instead of maintaining a separate CEPP for ARPI, FCIC will update the CEPP used for the Common Crop Insurance Policy (7 CFR 457.8) to establish pricing for both individual and area plans of insurance. FCIC thanks the public for their assistance in reviewing the CEPP and will consider all comments received and make appropriate changes in the CEPP. FCIC has revised the provisions to replace the term ''CEPP–ARPI'' with the term ''CEPP'' everywhere it appears in the provisions.

Comment: A commenter stated the term ''price'' as it relates to the volume of the contract should be renamed ''contract volume.'' This verbiage is much easier for a producer to understand. When a producer selects a coverage level of 85 percent and a price of 150 percent, what he is really doing is selecting 85 percent coverage on 180 bushels per acre in a county that has a base yield of 120. Allowing these contracts to be uniform will reduce the error rate of the agency and reduce producer confusion.

Response: FCIC is unsure of what provisions the commenter is referencing, as ''price'' is not a defined term. The projected price and harvest price are based off futures contract of commodity exchange markets. Producers cannot select more than 100 percent of the price. FCIC presumes that the commenter is referring to the protection factor of 120 percent. However, this is not a price election, nor does it change the deductible or trigger for an indemnity. It is simply a means to allow producers to better tailor the coverage to their individual risk. FCIC is unsure of what the commenter meant when stating, ''Allowing these contracts to be uniform will reduce the error rate of the agency'' and, therefore, FCIC cannot respond to this suggestion. No changes have been made.

3. Barley and Peanuts

Comment: Several comments were received regarding FCIC's decisions to not provide ARPI coverage for barley and peanuts. Commenters understand that producers have shown a preference for individual crop insurance coverage but peanuts should not be excluded from ARPI. The commenters stated there is potential for area risk protection to be beneficial for producers in certain situations including producers without a yield history, irrigated farms, and farms whose yields track well with the county yield. The commenters stated area-based insurance is generally cheaper than individual-based insurance and with more education from agents then more producers would utilize it. Commenters believe the contract price provision for the individual yield protection policy gives it the upper hand over area plans. Also the lower commissions to agents probably discourage sales as well as the risk of an individual loss. Commenters stated peanut producers would like to have revenue insurance like cotton. Commenters stated revenue insurance is under investigation by a couple of producer groups to determine a pricing method for peanuts. A commenter believes ARPI has potential for coverage of peanuts, once a better pricing method is developed so that ARPI and the Common Crop Insurance Policy are on equal footing as far as price election. Another commenter stated FCIC should be sensitive to comments from insurance providers and producers concerning the proposal not to include barley and peanut coverage under the ARPI program. It is important for FCIC to ascertain whether or not there is any producer interest in ''area'' coverage for these crops. Another commenter stated they understand there has not been any GRP coverage offered on these two crops in recent years due to limited interest, but questions if FCIC has done an assessment or review of producer interests in insuring these crops under ARPI.

Response: In response to the commenters' requests to include barley and peanuts under ARPI, FCIC has added ARPI Barley Crop Provisions and ARPI Peanut Crop Provisions to this rule.

4. Insuring Other Crops—No Written Agreements

Comment: Several comments were received regarding FCIC's decision to not allow written agreements for ARPI. One commenter stated they have no objection in principle to simplifying area coverage by not including provisions allowing for written agreements. However, in order to judge the impact of this decision on the market, it would be beneficial for FCIC to provide information regarding how many written agreements have been requested to insure hybrid seed corn, hybrid sorghum seed, popcorn, sweet corn, or other specialty corn (*e.g.* high-amylose, flint, flour, Indian, blue corn, wildlife-adapted, or any open-pollinated varieties) under the GRP and GRIP policies, and how many of those were approved. The commenter further stated since producers growing these crops will not be allowed to have area-based

coverage unless the crops are subsequently added under ARPI; FCIC should address how many producers are likely to be disadvantaged by this decision. The commenter questioned why is it being proposed to allow coverage for hybrid seed corn and hybrid sorghum seed under the ARPI program but not the other various types of corn that were previously allowed to have area coverage via the written agreement process. The commenter also questioned if FCIC plans to remove the GP Type from the Written Agreement Handbook in conjunction with this proposed change under the ARPI program. Another commenter questioned FCIC's intention to allow others crops to be insured under ARPI through the Special Provisions, and suggested FCIC include a reference to this intent in the policy. The commenter stated they would rather not see other crops insured under ARPI, as they believe these other crops are better served by individual plans of insurance.

Response: The overall number of GRP and GRIP written agreements has been less than one percent of the total GRP/GRIP policies earning premium each year. The number of approved written agreements out of GRP policies was 35 of 16,750 in 2007, 42 of 20,670 in 2008, 37 of 14,704 in 2009, 30 of 10,502 in 2010, 27 of 9,701 in 2011, and 29 of 8,822 in 2012. The number of approved written agreements out of GRIP policies was 302 of 39,651 in 2007, 216 of 24,116 in 2008, 248 of 21,746 in 2009, 189 of 17,009 in 2010, 202 of 14,306 in 2011, and 138 of 10,022 in 2012. Crops such as hybrid seed corn and hybrid sorghum seed could be insurable under the ARPI Crop Provisions because the data for these crops is collected by the National Agricultural Statistics Service and is included in the yield estimates for corn and grain sorghum. The reference to GP Type written agreements will be removed from FCIC issued procedures including the Written Agreement Handbook. The ARPI Crop Provisions already have provisions that allow insurance for other crops if specified on the Special Provisions. The applicable ARPI Crop Provisions specify that hybrid seed corn and hybrid sorghum seed is not insurable under ARPI unless specified in the Special Provisions as insurable.

5. Calculations

Comment: Several commenters noted the new ARPI proposed rule maintains the ''multiplier'' concept from GRP and GRIP so that producers with above average yields can get higher protection and renames the ''multiplier'' as ''protection factor.'' They noted the maximum protection factor a producer can select is reduced from 1.5 to 1.2 in the proposed rule. Also, the proposal rule introduces a new concept called ''total loss factor'' (TLF) which is described as accounting for lower county variation compared to an individual producer's variation. They noted it seems that there is a single value for TLF for each county, and this may change county to county. The example in the proposed rule used 0.82 for the TLF. The preamble to the proposed rules states ''The combination of reducing the protection factor to 120 and adding a total loss factor allows for ARPI coverage to not appear overstated but also recognizes, at certain thresholds, a total loss is likely to have occurred and ultimately results in overall coverage with respect to premium and indemnities to be similar to that previously provided by GRP and GRIP.''

The commenters stated that FCIC's reasoning in the quoted passage is not convincing. The commenters stated they worked through the total indemnity formulas (see the Appendix) and verified that reducing the protection factor to 1.2 would still accommodate the possibility of total loss in a county because the disappearing deductible feature of area plans is maintained in ARPI. They stated that under the existing GRP and GRIP policies, selecting an amount of protection higher than 1.2 would scale up the liability, premium, and indemnity equally, so that the loss ratio would remain the same. Then in that situation, a producer had to pay higher premium to choose a protection factor higher than 1.2. Whereas, with a built-in TLF, the producer obtains free protection unless the premium rates are properly adjusted (see the example below). The commenters stated the proposed rule provides no information with regard to this issue and requested that, at a minimum, more transparency on the impact of introduction of TLF on premium rates is warranted.

The commenters analyzed the example provided where the producer is assumed to choose a protection factor of 1.1 and coverage level of 75%. The premium rates for the parameters of the example are 0.0166 for ARPI, 0.0146 for ARPI–HPE, and 0.0116 for AYP. If setting TLF to 1 then this would be equal to GRP and GRIP, which has no TLF. The indemnities on this basis are shown in Table 1.

TABLE 1—THE IMPACT OF TOTAL LOSS FACTOR (TLF) ON INDEMNITIES

	TLF=1	TLF=0.82	Indemnity increase (Decrease) (percent)
ARPI	20,812	26,346	27
ARPI–HPE	11,946	15,718	32
AYPI	18,216	23,968	32

The commenters stated that from Table 1, the producer sees on average 30% (approximately) increase in indemnities. There is no information provided on how the premium rates accounted (if any) for that. If the producer would choose the maximum protection factor (under no TLF case), that is, protection factor going up from 1.1 to 1.5 (36% increase) while holding the coverage level at 75%, then the final policy protection, and therefore premium and indemnity (under TLF=1 column above), would go up about 36%.

The commenters stated that theoretically, under actuarially fair premium rates, a producer's demand for coverage with area insurance is the producer's beta (Bulut, Collins, Zacharias, 2011; Miranda, 1991). Producer's beta is defined as the correlation between the producer's loss and area loss multiplied by the standard deviation of farmer's loss divided by the standard deviation of area loss. A producer with a higher variation of loss relative to that of the area would demand higher coverage with area plan. Nevertheless, a built-in total loss factor provides extra coverage to every producer, ignoring the fact that some producers may have lower variation relative to the county level and would need less coverage.

The commenters then stated that in order to understand the magnitude of premium rate adjustments (if any) due to the TLF; the details of the cost-benefit analysis would be useful. However, the analysis could not be found at the designated Web site.

The commenters also had several fundamental concerns with the concept of protection factors and the TLF presented in the proposed rule. The commenters stated that while the limitation of the protection factor to a maximum of 1.20 does succeed in reducing the maximum amount of protection per acre as compared to the existing GRP and GRIP plans, the TLF counters this by the way in which it determines payouts for a given percentage of loss. Under existing plans, the total policy protection is paid out only if the county experiences a 100 percent loss. The deductible disappears in its entirety only when a total loss occurs. Under the new plans, the total policy protection is paid out even in cases where a total loss has not occurred. In the example in which the TLF is 0.82, the total policy protection is paid out when the percentage loss in the county equals or exceeds 82%. This is not at all similar to the coverage provided under GRP and GRIP.

The commenters objected to FCIC's decision to pay out the total policy protection in situations in which the loss is significantly less than a total loss. The commenters were not convinced that this is either necessary or in the best interests of the program. The disappearing deductible feature in the current GRP and GRIP policies already provides more protection than is available under individual risk protection policies, and it should be more than sufficient to enable producers to design effective risk management solutions for their farming operations. Paying a loss equal to the total policy protection when 18% of the crop is still in the field and available to be harvested creates an opportunity for producers to profit (*i.e.,* recover more than 100% of the crop's value) under the new insurance policy. The commenters stated this is not consistent with congressional intent to provide risk protection.

The commenters further stated that, in addition, consistent with their objection to the 1.50 multiplier in the GRP and GRIP programs, they objected to the inclusion of a protection factor that permits the producer to potentially over-insure the crop. In the aggregate, this could result in total indemnity payments for a county in excess of the total value of the crop. Given the new requirement for the producer to provide his production information, this problem could be mitigated by requiring the producer to support his selected protection factor based on his yield in relation to the county yield. This shortcoming should be corrected prior to implementation of the new program.

The commenters stated FCIC's justification for the total loss factor is that it compensates for the decreased variation in county yields relative to the individual producer. They found this argument unconvincing. The real world effect of this provision is to provide additional payments to producers in *deminimis* yield situations. If this is the actual rationale for making this change, then FCIC should be upfront about this. However, regardless of the justification for this change, this provision is inconsistent with the intended purpose for the area plan program. Area plan coverage is intended to protect against yield shortfalls affecting the county as a whole. As designed, the total loss factor provision over compensates producers for their loss. This will benefit each producer to a different extent, depending on the producer's residual yield. Some producers will, in effect, be compensated for harvesting the remainder of the crop, while others will be overcompensated for their loss. This will have unintended effects on production decisions. More importantly, FCIC's action to compensate producers for harvesting costs in *deminimis* yield situations establishes an undesirable precedent for future revisions to the individual risk forms of coverage.

Appendix: Consider a total indemnity calculation for ARPI–HPE: Use the following notation: Q^0: Expected County Yield, Q^1: Final County Yield, P^o: Projected Price, P^1: Harvest Price, *ECR:* Expected County revenue and $ECR = Q^0 \times P^0$; *FCR:* final county revenue and $FCR\ Q^1 \times P^1$; denote the coverage choice with *y,* denote scale choice with *z* whose maximum is now reduced to 1.2, *FPP* final policy protection $FPP = ECR \times a \times s \times z$, *PF:* payment factor (per acre indemnity), and $TIP = FPP \times PF$ total indemnity payments then $TIP = FPP \times PF$.

The effect of TLF shows up in the payment factor (also called per acre indemnity) calculation.

$$PF = \frac{ECR \times y - FCR}{ECR \times y - ECR \times (1 - TLF)} = \frac{y - FCR/ECR}{y - (1 - TLF)}$$

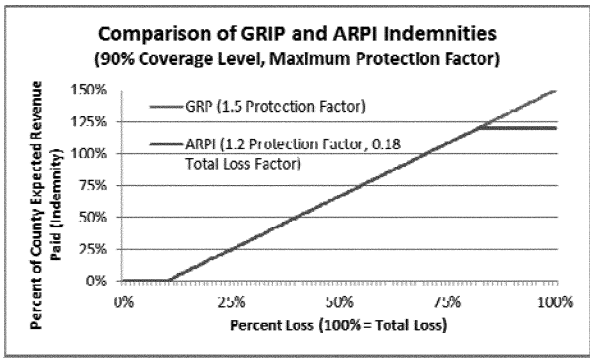
Because TLF is less than 1 (FCIC takes 0.82 in their example), the denominator in the payment factor calculation goes down, therefore, per acre indemnity goes up. Note that setting TLF = 1 would give the ''no TLF'' case.

Rearranging equation (1) yields

$$PF = \frac{y - 1 + (1 - FCR/ECR)}{y - 1 + TLF}$$

In the preceding equation, when the county loss (1 − *FCR/ECR*) equals *TLF,* then the payment factor (*PF*) would be 100%, verifying the definition of *TLF.* If the county loss is greater than *TLF,* the *PF* would be greater than 1. In that situation, the *PF* would effectively be capped at 1.00 since the definition of *TLF* states that the total indemnity is capped at the final policy protection. In the absence of *TLF,* that is, *TLF* = 1, the *PF* is less than 1 except the total loss case where the *PF* would be 1.

Response: As the commenters noted FCIC proposed using a total loss factor of 0.82 which is used in the payment factor calculation expressed as (1-total loss factor) resulting in 0.18. To improve clarity and use a more appropriate term for its use, FCIC has changed the term ''total loss factor'' to be ''loss limit factor'' and will simplify the payment factor calculation by eliminating the (1-total loss factor) as the loss limit factor will be 0.18. FCIC revised the payment factor calculations in sections 11 and 30 of the ARPI Basic Provisions to reflect these changes.



In regards to the commenters concerns with the total loss factor providing overcompensation, FCIC designed the ARPI policy in a way that allowed the protection factor (formerly ''multiplier'') to be reduced but still provide an effective level of risk protection. An example of this is shown in the nearby graph. The example compares the indemnities for the current GRP policy and the proposed ARPI policy. The example assumes a 90 percent coverage level and a protection factor of 1.5 for GRIP and 1.2 for ARPI, the maximum allowed for either policy. This example represents the most common coverage choice by producers who purchased GRIP policies. The new loss limit factor for ARPI in this example is set at 0.18, meaning that the ARPI policy will pay out its maximum indemnity limit when the county yield or revenue falls 82 percent below its expected county level. FCIC intends for the loss limit factor to be the same for all counties. As can be seen in the graph, any loss beyond this level no longer affects the amount paid out.

In this example, both policies pay out the same amount for the same loss up to 82 percent. Beyond 82 percent, the indemnity payments for the two policies diverge with ARPI no longer paying out since the coverage was limited to paying no more than 120 percent of the expected county revenue (county expected yield times projected price) and GRIP increasing up to 150 percent of expected county revenue beyond a loss of 82 percent in a county.

This example demonstrates how the loss limit factor enables ARPI to provide an equivalent amount of risk protection for most levels of loss as the current GRIP policy, even though the maximum protection factor for ARPI (1.2) is lower than for GRIP (1.5).

County wide production losses greater than 82 percent are relatively rare. However, should such losses occur, the smaller maximum protection factor for ARPI makes it less likely than GRIP to pay an amount that exceeds the actual loss experienced by the producer. The loss limit factor for ARPI has no relation to the de minimus yield issue associated with individual coverage. FCIC does not recognize or acknowledge de minimus yield in this product or any Federally reinsured plan of insurance. Over the years FCIC has been asked to consider using a de minimus yield for individual coverage, whereby when losses reach a certain level any remaining production would be ignored and not considered as production to count and a full indemnity be paid (*e.g.* an appraisal of 5 bushels per acre or less on a wheat policy would be ignored and considered as if no production remained). FCIC has not accepted or implemented a de minimus yield in its existing policies. Consistent with this approach, when losses reach a certain level for ARPI, no further indemnity payments are made. This is why, as shown in the previous graph, the payout for ARPI ceases to increase beyond a certain point as compared to the current GRP and GRIP policies. In other words, rather than ignoring production to count, ARPI is doing the opposite. It is, in effect, paying as if the county produced at least 18 percent of its expected level—regardless of how little production there really was. While the full liability under an ARPI policy may be paid, FCIC disagrees that the loss limit factor provides the opportunity for producers to profit by paying the total policy protection when some of the crop is still in the field and available for harvest. Individual farm revenues and yields are not considered under ARPI and it is possible that an individual farm may experience reduced revenue or reduced yield and not receive an indemnity under ARPI. An individual's loss situation is not determined by a loss adjustment appraisal under area-based plans of insurance. The overall average production in the county determines if there is a loss situation and whether an indemnity is due.

As directed by the Act, FCIC will charge premium rates for ARPI that are sufficient to cover expected losses plus a reasonable reserve. The premium rates for ARPI are expected to be generally higher than for GRP or GRIP. However, the higher rates will be substantially offset by a reduction in liability resulting from the reduced maximum allowed protection factor. Because of this offset, the total premium charged to producers for coverage under ARPI is expected to be similar to the former GRP and GRIP policies.

Comment: Many commenters stated they like the changes to the policy with one major exception; reducing the protection factor to 120 percent is not a sound idea. A commenter stated many of their insured producers find great value in the ability to protect up to 150 percent of the loss. The increased yield and price protection has given producers the support they want when they most need it even with higher premiums. Another commenter said the 150 percent protection factor helps to not only overcome yield variability but it also helps to purchase a higher level of price protection. The commenters stated when a producer purchases a revenue based crop insurance plan they are essentially purchasing a crop put option. Put options do not move penny for penny with the underlying futures price. This concept is referred to as delta. A delta of 0.5 means that for every one cent the futures move, the put option will move 0.5 cents. To overcome the impact of delta one can purchase more put options or in the case of GRIP can purchase a higher protection factor. A protection factor of 150 percent is ideal whereas a maximum protection of 120 percent leaves for more limited options. Furthermore, as long as the policy is rated accordingly to accommodate the 150 percent protection factor, there is little cost savings by reducing the factor. Another commenter stated the GRP and GRIP policies are easy to understand now and the proposed changes in the program will allow the government the ability to manipulate coverage and yield

data and the less government involvement the better. Another commenter stated the 1.2 multiplier is too restrictive for the area where their farm yields range from 75 percent to 160 percent of the county average, and some producers would be underinsured. Another commenter stated reducing the multiplier does not seem reasonable and recommended leaving the multiplier at 1.5, eliminating any coverage below 90 percent, but allowing the percentage of price down to 70 percent to keep it simple. Another commenter stated they are not sure if reducing the protection factor and adding a total loss factor improves the policy, and may give producers an unrealistic sense that they are better protected than with individual protection. Another commenter suggested having a higher upper limit for the protection factor of 1.3, which would replicate the previous GRP and GRIP programs. Several commenters stated the protection factor should be maintained at a multiplier no lower than 1.2.

Response: FCIC agrees that as long as the insurance product is rated accordingly, the 150 percent protection factor was actuarially sound for the area plans of insurance. However, FCIC received criticism that 150 percent was unreasonable as a representative yield for farms, even the highest-producing farms, and that the amount of insurance appeared excessive. There were concerns that subsidy was being paid on an amount of insurance that appeared excessive. Additionally, there were concerns that use of a county average yield meant that yields rarely reached the very low levels. The intent of the protection factor in ARPI is to allow producers who have yields higher or lower than the county average yield to insure a yield that is representative of their farm as compared to the average yield, and not to replicate a put option by allowing various spreads of prices. FCIC understands that producers would like to insure their crops for the highest amounts possible and FCIC believes that ARPI will need to be marketed differently than the old area plans to show producers that while the product is designed differently, it will work very similar to the old area plans of insurance. While the new protection factor is lower, the indemnities paid out by ARPI will be similar to the previous area plans of insurance due to the loss limit factor. The inclusion of the loss limit factor in the ARPI policy can offset the effect of the reduced multiplier and provide a level of risk protection that is similar to that provided by the current GRP and GRIP plans of insurance. Only in the rare occurrence of catastrophic loss do the payments between ARPI and GRP/GRIP diverge significantly, with ARPI payments being limited such that they are less likely to exceed the actual value of loss. As stated above, this is not like a de minimis yield in an individual plan of insurance which ignores remaining production. The loss limit factor simply states it is not paying out any more indemnity even if the yield falls below 18 percent. These two new methods of calculation for the insurance guarantee and the loss calculation should result in the insurance guarantee more closely matching a realistic farm value as well as no longer providing coverage that pays out any more indemnity when county average yields drops to a certain level. The payout of indemnities with the new calculations should be similar to the payout that occurred previously when there was a 150 percent protection factor except that ARPI is designed to never pay out more than 120 percent of the expected county yield or revenue when a county has a significant loss. Premium rates will be adjusted accordingly for the new calculations. FCIC agree with the commenters to offer a 1.2 protection factor, and will initially offer ARPI with a protection factor range of .80 to 1.20. FCIC has revised section 6(b)(1) of the ARPI Basic Provisions to make the protection factor this range unless otherwise specified in the Special Provisions instead of a factor shown on the actuarial documents. FCIC has also revised the definition of ''protection factor'' to remove the reference to this factor being a percentage from those offered in the actuarial documents.

Comment: A commenter stated the computation factor of the yield selected should be similar to how the Pasture Rangeland Forage (PRF) coverage is done. The PRF coverage ranges from 60 percent to 150 percent of the base values. GRIP and GRP coverage is very confusing as 100 percent of the policy is 150 percent of the base yield, as shown by the ''scalar'' of 1.5 in the contract. It would be simpler if producers could select 60 percent to 150 percent of the base coverage depending on their situation, just like the PRF contract. For example, if there is a county yield of 120 bushels per acre. The producers could purchase a coverage level of 70, 75, 80, 85, or 90 percent at 60 to 150 percent of the base county yield. He could select any coverage on a yield of 72 to 180 bushels per acre.

Response: ARPI has a different design and uses different terminology from PRF, but ARPI as proposed already has a multiplier (scalar) similar to PRF. The multiplier for ARPI is called the protection factor and essentially allows an insured to customize their guarantee to be either 80 percent or 120 percent of the expected county yield. The multiplier for PRF is called the productivity factor and is a range of 60 to 150 percent of the base county value. Given the different ways the programs operate, one based on vegetative growth or rainfall, and the other based on actual county yields, FCIC has determined that it is more appropriate to maintain the different multipliers. No change has been made.

Comment: A commenter stated that FCIC's idea to pay 100 percent of the loss when the yield drops to a catastrophic level is not reasonable as area plans of insurance rarely, if ever, get to a catastrophic level. The commenter further stated this is simply not a good use of taxpayer's money for ''free'' catastrophic coverage to be included in the area plans of insurance.

Response: FCIC agrees that area yields rarely drop to catastrophic levels, but disagrees that ARPI provides free catastrophic coverage. The coverage is not ''free'' as the commenter suggests because producers pay the portion after subsidy of the actuarially sound premium for the coverage except in the case of CAT coverage where they pay a fee. The loss limit factor is the loss level at which the ARPI policy no longer provides any more coverage, which is different from GRP/GRIP. ARPI and GRP/GRIP if compared would both pay out 120 percent of the expected county yield or revenue when the county has an 82 percent loss. The major difference is that in the GRP/GRIP policies if the county yield is less than 18 percent of the expect county yield then more indemnity is paid out beyond 120 percent all the way to potentially paying out 150 percent of the expected county yield or revenue in the rare occurrence of a total county loss. Under ARPI, even if the county yield falls below 18 percent, no additional indemnity is paid.

Comment: A commenter asked if the total loss factor would be published in the actuarial documents.

Response: FCIC has replaced the term ''total loss factor'' with the term ''loss limit factor'' and modified the definition to state unless otherwise specified in the Special Provisions the factor is .18.

6. Production Record

Comment: Many comments were received regarding FCIC's proposal to require production reporting for ARPI. One commenter stated that requiring producers to submit an annual production report could potentially kill

the program. Another commenter stated they selected area plans of insurance because there is no production information required and this allows producers to do the best they can to maximize yields and prevents fraudulent activity that goes on in the individual insurance policies. The commenter further stated that area plans save time with the only reviews being for acres, which the FSA 578 summary provides this evidence, and not having to spend time with a loss adjuster. The commenter further states they strongly disapprove of the production reporting change since production is irrelevant to the policy, can live with other aspects of the proposed changes if this reduces premium, but the production reporting requirement could force me out of the program. Another commenter stated the production reporting requirement removes the simplification advantage of area plans, and while it may improve accuracy of the program, it adds undue and unprecedented burden on the producers and agents. Another commenter stated if such data is needed for program integrity then maybe ARPI coverage should not be offered. The commenter further states GRP/GRIP only accounted for just over five percent of the total crop insurance liability and production reporting should be voluntary and without penalty. The commenter also asked why FCIC is not already collecting enough yield information from individual plans of insurance that the need for APRI data is minimal or unnecessary, and improvements need to be made to non-ARPI plans of insurance.

Response: The lack of data is one of the biggest barriers to being able to provide area insurance products and current budgetary situations are causing some data series to be discontinued. Without unbiased, sufficient, and credible data sources, it is not possible to provide area insurance and existing programs could be discontinued due to changing data availability. When NASS county yield data is unavailable, this creates problems for calculating final county yields used for determinations of loss under area plans of insurance. In order to assure the integrity of ARPI, production reporting will provide FCIC with credible data to use in the determination of insurance offers and for determinations of loss at the end of the insurance period. Including production data from producers who insure under both area and individual policies improves the accuracy of the county yields. This reporting will allow FCIC to offer and maintain the program in more areas than may be possible utilizing only NASS county yields. Many producers already keep this information on a year-to-year basis and many insurance providers also maintain databases containing this information to use when producers need their actual production history (APH) when changing to an individual plan of insurance. FCIC is always considering ways to improve the collection of data and will consider future improvements to production reporting for individual plans of insurance. No change has been made.

Comment: Several commenters questioned the current administrative and operating subsidy for area plans of insurance and believe the new requirement of producers submitting annual production reports should make the administrative and operating subsidy equal to individual plans of insurance. The commenters asked if compensation under the reinsurance agreement would be adjusted to reflect this additional workload.

Response: While production reporting is a new requirement for area-based plans of insurance, FCIC believes the production reporting requirement will have minimal additional administrative burden for area plans of insurance. The administrative and operating subsidy (A&O) reimburses insurance providers for much more than simple data collection, including loss adjustment which is minimal for the area plans of insurance. Any compensation changes would have to be addressed in reinsurance negotiations between FCIC and the insurance providers, as the request is outside the scope of this regulation.

7 CFR Part 407

Section 407.2 Availability of Federal Crop Insurance

Comment: Many commenters questioned the language in section 407.2 (b) which states that, ''the contract contained in this part may be offered directly to producers through agents of the United States Department of Agriculture.'' Commenters viewed the language as implying that the ARPI contract could be sold by the Farm Service Agency, acting as agents for the United States Department of Agriculture. Commenters requested that this language in section 407.2 (b) either be clarified or removed.

Response: FCIC has revised section 407.2 (b) and modified the language to reflect the decision of the Secretary to only offer coverage through approved insurance providers unless the Secretary determines that the availability of local agents is not adequate in an area.

Section 407.8 The Application and Policy

Comment: A commenter asked if FCIC should issue guidelines for insurance contract cancellations if FCIC or insurance providers may cancel insurance due to determinations of excessive risk down to a farm level in § 407.8 (b).

Response: ARPI is area-based insurance that is not intended for producers who want to insure at the farm level. A single farm generally does not greatly influence the insurance risk for an entire county. RMA is not considering issuing guidelines for contract cancellation for area-based plans of insurance based on excessive insurance risk at the farm level. FCIC has revised the provisions in (b) and removed ''farm'' from the determinations of excessive insurance risk.

Comment: A commenter asked if a disclaimer form would be required for ARPI. The commenter recommended that FCIC does not require a disclaimer form since the area plan concept has been in existence for a number of years.

Response: FCIC did not propose and will not require a disclaimer form for ARPI.

Section 407.9 Area Risk protection Insurance Policy

Comment: Several commenters noted the third paragraph states ''Throughout this policy, 'you' and 'your' refer to the named insured shown on the accepted application . . . '' but the term ''named insured'' is not defined. The commenters suggested FCIC either add this definition, or revise the language using terms already defined. The commenters also recommended changing the reference to ''insurance company'' to ''insurance provider'' since this term is defined.

Response: The provisions define the term ''insured'' which includes the phrase ''The named person as shown on the application accepted by us.'' FCIC agrees with the commenters and has revised the provisions to use the term ''insured'' anywhere the phrase ''named insured'' was used in the proposed provisions. FCIC also agrees with the commenters that the reference to ''insurance company'' should be changed to ''insurance provider'' since that is the term defined and used in the provisions.

Comment: A commenter questioned number (3) of the order of priority for policy provisions in the Agreement to Insure section. The commenter stated the actuarial documents are not really a policy provision document and

questioned the validity of this item being listed in the priority list. The commenter also stated they do not see how this item can take priority over any of the actual policy provision documents that are issued to the producer. The commenter also pointed out this item was not listed in the Common Crop Insurance Policy Basic Provisions.

Response: By definition, the actuarial documents are a part of the policy. FCIC has revised the Agreement to Insure section by replacing the phrase ''policy provisions'' with the word ''policy''. The policy priority has been revised to now state ''(2) Special Provisions'' and ''(3) actuarial documents'' and is renumbered accordingly.

Section 1 Definitions

Comment: A few commenters stated many of the defined terms in ARPI are also in the Common Crop Insurance Policy Basic Provisions, but some of the terms are defined differently in ARPI. Where possible, terms with the same intent and purpose should be identically defined with the Common Crop Insurance Policy.

Response: FCIC agrees that most terms should be identically defined between the ARPI Basic Provisions and the Common Crop Insurance Policy Basic Provisions. However, some terms do have a different meaning under ARPI and are defined accordingly. FCIC has changed some definitions as a result of other comments to the proposed rule but no specific definitions were changed from this comment.

Comment: A commenter questioned why the definition of ''actuarial documents'' includes the Special Provisions, when the Special Provisions are not an actuarial document. The commenter suggested removing the reference to Special Provisions from the definition.

Response: FCIC agrees with the commenter that the Special Provisions are not an actuarial document and will remove the reference to the Special Provisions in the definition of ''actuarial documents.'' However, the Special Provisions and actuarial documents are both a part of the policy and in accordance with changes to the Agreement to insure section, FCIC has added language to state that the actuarial documents are a part of the policy. Since all parts of the policy can be found together, FCIC has copied the following language ''. . . and is available for public inspection in your agent's office and published on RMA's Web site'' from the definition of ''actuarial documents'' and added this to the end of the definition of ''Special Provisions.'' In addition, USDA has started an initiative called the Acreage Crop Reporting Streamlining Initiative (ACRSI) to simplify the acreage reporting process by establishing a common USDA framework for commodity reporting that will enable producers to report common data once. This will be accomplished by establishing common data standards for automated processes across USDA, which will simplify and reduce the need for producers to provide the same information at different times to different agencies. FCIC is working to conform to ACRSI and is transitioning the current actuarial offers of type and practice shown on the actuarial documents. FCIC is also expanding the display of types and practices into eight new fields. Type will now become a combination of four fields called commodity type, class, subclass, and intended use. Practice will now become a combination of four fields called irrigation practice, cropping practice, organic practice, and interval. This transition does not increase the number of actuarial offers but displays the types and practices in a format that better conforms to the common data standards of the ACRSI. As a result, FCIC removed the following language ''. . . practices, particular types and varieties of the insured crop . . .'' from the definition of ''actuarial documents'' and replaced with ''. . . types (commodity types, classes, subclasses, and intended uses), practices (irrigated practices, cropping practices, organic practices, intervals) of the insured crop . . .'' Any reference to the crop, type, or practice being shown on the ''Special Provisions'' has been changed everywhere in the Basic Provisions and Crop Provisions to the term ''actuarial documents.''

Comment: A commenter suggested the term ''agricultural experts'' match the plural use of ''persons'' by revising the second sentence to start with ''Persons who have a personal or financial interest . . .'' and change the third sentence to ''For example, contracting with a person . . .''

Response: FCIC agrees with the commenter and has revised the definition accordingly.

Comment: A commenter asked, based on the definition of ''area,'' how often and on what basis would a county be replaced by another geographical area as specified in the actuarial documents.

Response: As of the date of this rule, area continues to be based on a county. However, requests are made to expand area coverage to new counties where there may not be adequate data. The term ''area'' is defined in a way that allows FCIC the flexibility to make ARPI offers for a geographical area other than a county. In some situations it may be more actuarially appropriate for certain geographical regions to be divided or combined into an area other than at a county level based on the availability of yield data or the homogeneity of the land.

Comment: A commenter suggested for the definition of ''area yield protection'' adding language to specify it does not provide protection against loss of revenue.

Response: FCIC agrees and has revised the provision accordingly.

Comment: Several commenters stated the definition of ''assignment of indemnity'' is essentially the same as the one in the Common Crop Insurance Policy Basic Provisions but is broken into two separate sentences and some of the words are rearranged. The commenters suggested, unless these changes are improvements, the definitions should match.

Response: FCIC agrees and has revised the definition accordingly.

Comment: Several commenters questioned why ARPI defines the term ''commodity'' but uses the term ''agricultural commodity'' in numerous places in the policy.

Response: FCIC intends to use the term ''commodity'' and will replace ''agricultural commodity'' with the term ''commodity'' everywhere it appears in the provisions. FCIC also will revise the definition of ''commodity'' to more appropriately match USDA's ACRSI objective of using common standardized data and terminology. In addition, FCIC will add and define the term ''crop'' to recognize that a crop is the insured commodity.

Comment: Several commenters questioned why the definition of ''county'' is significantly different from same term under the Common Crop Insurance Policy Basic Provisions, and why the language ''. . . acreage in a field that extends into an adjoining county if the county boundary is not readily discernible'' has not been included in the definition. The commenters explained this would allow for greater consistency between all plans of insurance, especially due to the new production reporting requirements.

Response: The ARPI definition of ''county'' is different because of the need to incorporate the term ''area.'' FCIC agrees with the commenters and will add the following language to the end of the definition: ''including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.''

Comment: Several commenters questioned the use of the term

''credible'' and said this term appears to be used only in regards to ''data'' that is ''of sufficient quality and quantity to be representative of the county.'' The commenters also said ''credible'' is an adjective and should not be redefined from its general meaning. The commenters suggested changing the term to ''credible data'' and then define the meaning.

Response: FCIC agrees with the commenters and will replace the term ''credible'' with the term ''credible data'' with the same definition.

Comment: A commenter asked since the term ''delinquent debt'' seems to be an important definition and many past National Appeals Division cases have dealt with delinquent debt, this term should be defined in the policy, or at a minimum a Web site link to 7 CFR part 400, subpart U should be provided. Another commenter stated it would seem preferable to provide the definition of ''delinquent debt'' rather than requiring the producer (and insurance provider) to look it up in the CFR. The commenter also said the same goes for the definitions of ''limited resource farmer'' and ''verifiable records.''

Response: FCIC understands the commenters concern of referring the readers to another document for the definition. However, it is not uncommon for the Basic Provisions to contain cross references to other provisions in 7 CFR part 400. Further, these regulations are part of the policy as it is defined. Maintaining one definition of ''delinquent debt'' in 7 CFR part 400, subpart U and a cross reference in the Basic Provisions will prevent conflicts between the Basic Provisions and subpart U. FCIC has added the link to the Web site where the definition can be found. The definition of ''limited resource farmer'' contains a Web site address and FCIC will add the Web site to the definition of ''verifiable records''.

Comment: Several commenters questioned the phrase ''directly or indirectly'' used in place of ''financially'' in the definition of ''disinterested third party.'' The commenters believe this terminology has a broader implication but the intent is not clear, and identification of an indirect benefit will be subjective. Another commenter suggested changing the phrase ''(1) That does not . . .'' to ''(1) Who does not . . . '' to be consistent with the phrase ''(2) Who will not . . .'' Another commenter pointed out the term ''disinterested third party'' is not used in the ARPI Basic Provisions.

Response: FCIC agrees that the term ''disinterested third party'' is not used in the ARPI Basic Provisions and has elected to remove the definition.

Comment: A commenter stated the definition of ''dollar amount of insurance per acre'' indicates that the projected price will always be used, but fails to account for a producer who elects less than 100 percent of the projected price. The commenter further stated this would also affect the policy protection computation in section 6(f) and all other provisions that utilize this definition.

Response: Under ARPI, producers will not have the choice of selecting a percentage of the projected price. Unless a producer elects the catastrophic risk protection (CAT) level of coverage, one hundred percent of the projected price will be used in calculating the dollar amount of insurance per acre. If the producer elects CAT coverage 45 percent of the projected price will be used to calculate the dollar amount of insurance per acre. The CAT coverage offered under ARPI is equivalent to the CAT coverage previously offered under the Group Risk Plan (GRP) which ARPI is replacing. Group coverage is required to be 'comparable coverage' to an individual plan, for which CAT is statutorily defined as 50 percent of yield and 55 percent of price. RMA has determined that comparable area-based coverage is 65 percent of yield and 45 percent of price. FCIC will remove section 2(b)(4), which will eliminate the ability for producers to select a percentage of the projected price on their applications for insurance.

Comment: A commenter questioned if the terms ''expected county yield'' and ''final county yield'' should reference section 15 for an explanation of how and who determines these yields.

Response: FCIC agrees and has added a reference to section 15 in these definitions.

Comment: A commenter stated the term ''final planting date'' in ARPI seems to be a different definition than what is contained in the Common Crop Insurance Policy Basic Provisions and is therefore confusing to producers. The commenter gave the example of a Common Crop Insurance Policy corn policy with a final planting date of May 31st and a 25-day late planting period, which means the late planting period ends June 25th. The commenter further states then for ARPI the final planting date would be June 25th and the CCIP final planting date would be May 31st for the same crop and county. Another commenter questioned the phrase ''generally consistent'' stating it is ambiguous and fails to improve the clarity of the definition. The commenter asked FCIC to consider deleting the phrase ''generally consistent with.'' Another commenter stated the final planting date is a new requirement for the insured crop to be planted by the final planting date in order to be insurable. This commenter questioned if it is FCIC's intent for the insurance provider to capture the actual planting date in order to determine if the acreage is insurable or not. The commenter stated this would create a large increase in workload to capture information for the very few situations in which the acreage might be planted after the last day of the normal late planting period as outlined in other individual reinsured policies.

Response: FCIC defined ''final planting date'' differently because there is no coverage for prevented planting or and no reduction in the guarantee if the crop is late planting under ARPI because this is an area policy. However, to protect program integrity, FCIC needs to ensure that producers planted, and used good farming practices, with the expectation of making a crop. Therefore, FCIC is retaining the requirements to plant by the final planting date and has elected to use the last day of the late planting period as the final planting date. FCIC agrees that the phrase ''generally consistent with'' should be removed and has removed the entire second sentence from the definition of ''final planting date,'' since the first sentence is unambiguous and clearly defines the final planting date as the date contained in the actuarial documents. FCIC also revised section 8(c)(1) to specify the last date the insured crop was planted must be reported.

Comment: Several commenters stated the term ''FSA serial farm number'' should be corrected to ''FSA farm serial number.''

Response: FCIC has revised this term to ''FSA farm number'' since FSA now uses the term ''farm number'' in place of term ''farm serial number.''

Comment: Several commenters stated the definition of ''insurable interest'' is significantly different from the same term as defined in the Common Crop Insurance Policy Basic Provisions. The commenters suggested defining ''operator'' since, as currently stated in ARPI the new definitions for ''disinterested third party,'' ''insurable interest'' and ''share'' may collectively imply that an ''operator'' might include a custom harvester or farm manager, both of whom would have at least an indirect financial interest in the crop.

Response: FCIC agrees that the definition of ''insurable interest'' is

significantly different and has revised the definition to match the same term as defined in the Common Crop Insurance Policy Basic Provisions, which does not include a reference to ''operator.'' FCIC has also revised the definitions of ''share'' to be consistent with the Common Crop Insurance Policy Basic Provisions and removed the definition of ''disinterested third party'' because it is not used in the policy.

Comment: Several commenters questioned the intent of the last sentence of the definition of ''insurance provider'' which states, ''We are an insurance provider.'' One commenter stated it does not appear to add any meaning to the definition and should be deleted. Another commenter questioned what the word ''we'' refers to in the last sentence.

Response: The paragraph preceding the ''Agreement to Insure'' section at the beginning of the policy clarifies to whom ''we'' refers. Therefore, the last sentence in the definition of ''insurance provider'' is redundant and has been removed.

Comment: Several commenters stated the term ''payment factor'' should not have ''Factor'' capitalized so as to be consistent with most other multi-word definitions.

Response: FCIC agrees and has changed the term accordingly.

Comment: A commenter asked if FCIC would consider expanding the definition of ''planted acreage.'' The commenter stated the adequacy of the planted acreage term may not be an issue for this proposed rule, but it does not fit well with all crops. For example, sugarcane and potatoes are planted using pieces of the sugarcane stalk or potato; sweet potatoes are planted with slips. The commenter suggested expanding the definition of planted acreage to include for example, ''seed, vegetative plant parts, plants, trees, and other propagation materials '' or other suitable designations.

Response: FCIC realizes that ARPI may be expanded in the future to include crops with other planting practices. Therefore, FCIC has revised the definition to allow other planting methods to be included in the Special provisions.

Comment: Several commenters questioned the benefit of including good farming practice considerations in the definition of the term ''practice.'' The commenters stated these terms are separate concepts with separate purposes under the policy and should be separately defined. A commenter questioned if the phrase ''. . . qualifying as good farming practices . . .'' should be moved from the first sentence to the second sentence. The commenter also recommended in the second sentence changing the phrase ''specific practices that are insured'' to ''specific insurable practices'' and stated the phrase ''may be listed'' is confusing because how can an insured practice NOT be listed in the actuarial documents.

Response: FCIC agrees with the commenters that the definition of ''practice'' is problematic and has revised the definition to now state ''Production methodologies used to produce the insured crop consisting of unique combinations of irrigated practice, cropping practice, organic practice, and interval as shown on the actuarial documents as insurable'' which also helps FCIC conform with the ACRSI goal of using common data standards across USDA. FCIC has added and defined the new terms ''irrigated practice,'' ''cropping practice,'' ''organic practice,'' and ''interval.'' Each unique combination of these four categories will match the original practice actuarial offer.

Comment: A commenter recommended in the definition of ''protection factor'' changing the phrase ''. . . and is used . . .'' to ''and that is used . . .''

Response: FCIC agrees and has changed the definition accordingly.

Comment: A commenter asked, according to the definition of ''replanted crop,'' is replanting required under the area plans of insurance if the crop is destroyed on or before the final planting date; *i.e.,* good farming practice.

Response: FCIC does not require replanting if the crop is destroyed on or before the final planting date.

Comment: Several commenters stated the definition for ''share'' is different from the same term defined in the Common Crop Insurance Policy Basic Provisions, and collectively with the new definitions for ''disinterested third party'' and ''insurable interest,'' could imply that an ''operator'' might include a custom harvester or farm manager, who could have at least an indirect financial interest in the crop. In addition, the commenters noted if premium is determined on the share as of acreage reporting date some of the policy references to ''share'' do not appear to be consistent in section 8.

Response: FCIC agrees the definition of ''share'' is inconsistent with section 8 and has revised the definition to now state, ''Your insurable interest in the insured crop as an owner, operator, or tenant.'' This change, the deletion of ''disinterested third party, and the revision to the definition of ''insurable interest'' should no longer imply that a custom harvester or farm manager, who could have an indirect interest, would have an insurable interest in the crop. FCIC has also revised section 8 to correct other inconsistencies with the definition of ''share'' and to be more consistent with the Common Crop Insurance Policy.

Comment: Several comments were received regarding the definition of ''total loss factor.'' A commenter was concerned the total loss factor works like an increasing payment product and is unsure if the increased risk is properly rated. Another commenter stated even though it is unlikely that a county level loss will reach a level similar to the total loss factor of 0.82, the use of this factor would seem highly inappropriate for insuring grain crops and cotton. The commenter further stated it has never been nor should it be a practice to ignore potential production regardless of reduced levels of crop production that might remain following damage. The use of this factor also represents a departure from normal practice for individual yield based revenue products where any appraised production greater than zero is used to determine the indemnity. It is not employed in either of the current GRP and GRIP programs. If a producer wishes to elect coverage that recognizes zero potential (total loss), the option to purchase individualized protection should be elected.

Response: As directed by the Act, FCIC will charge premium rates for ARPI that are sufficient to cover expected losses plus a reasonable reserve. The premium rates for ARPI are expected to be generally higher than for GRP or GRIP. However, the higher rates will be offset by a reduction in liability as a result of the lower protection factor which will result in similar premium amounts collected. FCIC does not understand the basis for the comments regarding the practice of ignoring potential production and appraised production greater than zero. ARPI is an area-based insurance product which does not use loss adjustment appraisals to determine indemnities. The overall average production in the county determines if there is a loss situation and whether an indemnity is due. The loss limit factor, combined with the lower maximum protection factor, makes ARPI pay as if there were an appraised level of production of at least 18 percent, regardless of how low county production actually falls.

Comment: Several commenters stated the word ''premium'' for the term ''total premium'' should not be capitalized.

Response: FCIC agrees and has revised the term accordingly.

Comment: Several commenters stated that in the definition of ''type'' the phrase ''may be listed'' is confusing because how can an insured type NOT be listed in the actuarial documents.

Response: FCIC agrees with the commenters that the definition of ''type'' may cause confusion and has revised the definition to now state ''Categories of the insured crop consisting of unique combinations of commodity type, class, subclass, and intended use as shown on the actuarial documents as insurable,'' which also helps FCIC conform with the ACRSI goal of using common data standards across USDA. FCIC has added and defined the new terms ''commodity type,'' ''class,'' ''subclass,'' and ''intended use.'' Each unique combination of these four categories will match the original type actuarial offer.

Comment: A commenter noted the term ''upside harvest price protection'' is defined but questioned if the term ''downside harvest price protection'' should also be defined.

Response: It is unnecessary to define the term ''downside harvest price protection'' as this term is not used in the provisions. The Area Revenue Protection plan and Area Revenue Protection with the Harvest Price Exclusion plan both provide protection against loss of revenue due to price decline, which is equivalent to downside harvest price protection. No change has been made.

Comment: Several comments were received regarding the definition of ''verifiable records.'' One commenter suggested FCIC provide a Web site link of where the definition is provided. Another commenter questioned since ''verifiable records'' is defined, should the applicable term ''production report'' be defined with the institution of new production reporting requirements in this rule. The commenter also stated section 8 of the provisions should be clearer when the production report must be submitted since the Special Provisions do not contain a field for this date. The commenter also states the timing of the production reporting date is critical especially if used for determining expected and final county yields for current crop year loss determinations.

Response: FCIC has added a link to the definitions in 7 CFR parts 400, subpart G. FCIC agrees with the commenter about defining the term ''production report'' and has added the definition to the provisions. In the future, the actuarial documents will contain a field for the date when the production report must be submitted which will be in advance of the date for the release of the final county yields.

Comment: A commenter noticed the definition of ''written agreement'' is not included in ARPI. The commenter asked if FCIC has performed an analysis of how many written agreements were written on past GRP and GRIP policies and any effect on these insureds, as they would not be able to cover these acres via an area revenue type policy.

Response: FCIC did not include a definition for ''written agreement'' since written agreements will not be used for ARPI. FCIC's analysis shows the total number of GRP and GRIP written agreements accounted for less than 1 percent of the total GRP and GRIP policies earning premium each year. Acreage for other crops such as hybrid seed corn, popcorn, and sweet corn can currently be insured under other plans of insurance offered by FCIC. FCIC may insure other crops under the ARPI Crop Provisions if the crop is specified on the Special Provisions.

Section 2 Life of the Policy, Cancellation and Termination

Comment: Several commenters suggested consolidating the first two sentences of section 2(b) to minimize repetition.

Response: FCIC agrees and has revised section 2(b) accordingly.

Comment: A commenter stated the provisions in section 2(b)(4) imply that for the Area Yield Protection plan a percentage of less than 100 percent of the projected price is allowed and asked whether this election applies on a crop/county basis or can it vary by crop, practice, or type.

Response: FCIC will not allow a producer to select a percentage of the projected price and has removed section 2(b)(4). The rest of section 2(b) has been renumbered accordingly.

Comment: Numerous comments were received regarding section 2(b)(6)(i) and the language in the parenthetical phrase not matching the revised procedure in the 2012 Crop Insurance Handbook (CIH). Several commenters stated the word ''including'' suggests that ''joint ventures, limited liability companies, and trusts'' are considered to be under the ''individual . . . operating as a business'' person type, but they are identified as separate person types in the CIH. The commenters further stated the use of an employee identification number (EIN) is now required as opposed to the implied option indicated by using the word ''may'' for individuals operating as a business and for irrevocable trusts, and for revocable trusts if an EIN has been established (social security number (SSN) can be used only if there is no EIN for the revocable trust). The commenters also stated the phrase ''. . . but must also provide your SSN'' is unclear that the SSN would be for the individual who has a substantial beneficial interest in the insured entity using an EIN as the identification number.

Response: FCIC agrees and has revised the language of section 2(b)(6)(i), which has been redesignated as section 2(b)(5)(i) because section 2(b)(4) has been removed, to be consistent with section 2 of the Common Crop Insurance Policy Basic Provisions.

Comment: FCIC received numerous comments for section 2(c). Several commenters stated section 2(c)(1) begins with a reference to a singular ''person with a substantial beneficial interest'' but later refers to plural ''ineligible persons with a substantial beneficial interest''. Several commenters suggested in section 2(c)(2) either not subdividing the parenthetical language into subparagraphs (i) and (ii) within the parentheses, or setting it up as a separate subparagraph. Several commenters suggested revising section 2(c)(3) for clarity. The section states ''Your policy will be void . . . any time that an incorrect or omitted SSN or EIN, provided on the application, would have allowed . . .'' The commenters stated since an omitted SSN or EIN would not be provided on the application this merits rewriting.

Response: FCIC agrees and has revised all of section 2(c) to be consistent with section 2 of the Common Crop Insurance Policy Basic Provisions, which should address the comments and to provide more clarity for what happens if the application contains an incorrect SSN or EIN or if an SSN or EIN was omitted for the insured and a person with a substantial beneficial interest in the insured.

Comment: Several commenters inquired whether section 2(f) really intended to allow revisions of ''any of your information'' until the acreage reporting date per section 2(f)(1), or even until the time a claim is paid per section 2(f)(2), which is quite different from the Common Crop Insurance Policy Basic Provisions. The commenters asked if this is the intent does this include all the categories of ''information'' listed in section 2(b), or is this restricted to the tax identification number(s) of the insured and persons with a substantial beneficial interest as suggested by the reference in section 2(f)(3) to section 2(c)(1) and (3). A commenter also stated perhaps section 2(f) could be a part of section 2(c), but then why does section 2(c) have other penalties of not accepting or voiding the

policy if the tax identification number information is incorrect or not provided.

Response: The intent of section 2(f) is to require the reporting of changes to any information on the application for persons with a substantial beneficial interest in the insured, including changes to the SSNs and EINs. FCIC has revised all of section 2(f) to be consistent with the Common Crop Insurance Policy Basic Provisions. FCIC disagrees that section 2(f) could be a part of section 2(c) since both sections 2(c) and 2(f) were revised to be consistent with the Common Crop Insurance Policy Basic Provisions and to maintain flow from 2(f) to 2(g).

Comment: Several commenters suggested moving the word ''and'' from the end of section 2(f)(2) to the beginning of section 2(f)(3) to make for a proper flow from the lead-in of section 2(f).

Response: FCIC agrees and has revised the provisions accordingly.

Comment: Several commenters suggested in section 2(g) moving the comma from before the word ''is'' to after.

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A commenter inquired if it would be possible in sections 2(k)(2)(i)(A) and (B) to write the parenthetical statement once to apply in both sections instead of repeating the language each time.

Response: Having only one parenthetical apply to both situations would require a substantial rewrite of the provisions. Given that this is a final rule, FCIC does not want to risk a rewrite that may inadvertently change the meaning of the provisions. Therefore, no change has been made.

Comment: Several commenters noted section 2(k)(2)(ii) states ''. . .any indemnities paid subsequent to the termination date must be repaid.'' The commenters inquired if it should not instead state '' . . . prior to the termination date . . .''

Response: The provision, as written, is correct. A delinquent debt for any policy makes a producer ineligible to obtain insurance for any subsequent crop year. Section 2(k)(2)(ii) addresses what happens if insurance had attached and an indemnity was paid for a subsequent crop year.

Comment: Several commenters inquired about the provisions in section 2(k)(2) and (3) regarding termination of a policy due to unpaid premium or administrative fees and subsequently regaining eligibility. The commenters noted that the ARPI policy provides for only two methods to regain eligibility (repay the debt in full, or declare bankruptcy) and asked if FCIC intended to not include any provisions for the execution of a written payment agreement to pay amounts due. The commenters also noted these comparable provisions were in the GRP Basic Provisions and section 2(f)(2) and (3) of the Common Crop Insurance Policy Basic Provisions contains language for written payment agreements.

Response: FCIC agrees with the commenter that eligibility may be regained by executing a written payment agreement. FCIC will make the ARPI provisions in 2(k)(2) and (3) consistent with sections 2(f)(2) and (3) of the Common Crop Insurance Policy Basic Provisions, and specify that when there has been a termination of a policy due to unpaid administrative fees, premiums, or other amounts due FCIC, the producer can regain eligibility by executing a written payment agreement and make payments in accordance with the agreement.

Comment: Regarding sections 2(k)(2)(i)(D) and 2(k)(3)(ii) a commenter advised these two provisions should be revised to tie regaining eligibility to the discharge of a bankruptcy petition instead of the filing of a bankruptcy petition. The commenter stated that allowing individuals who have merely filed for bankruptcy to participate in the program creates a program vulnerability that should be stopped. Using the filing of a bankruptcy petition as the trigger for regaining eligibility based upon concerns that denying participation until discharge would violate 11 U.S.C.A. § 525(a) is in error. Section 525(a) states, ''. . . a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.'' The courts of appeals that have approached the question have read the statute's reach narrowly, focusing upon the specific language of the statute. See, *e.g., Watts* v. *Pennsylvania House. Fin. Co.,* 876 F.2d 1090, 1093–94 (3d Cir.1989); *In re Goldrich,* 771 F.2d 28, 30 (2d Cir.1985). Watts involved an emergency mortgage assistance program designed by the State of Pennsylvania to prevent imminent mortgage foreclosures by providing for loans to distressed borrowers in the form of direct payments to their mortgage lenders, keeping their mortgages current. When plaintiff borrowers filed for bankruptcy, the program suspended these payments for the duration of the Bankruptcy Code's automatic stay. Plaintiffs contended this suspension violated § 525(a). In response, the court of appeals noted that a loan from the Pennsylvania program simply was not a ''license, permit, charter [or] franchise,'' and that since those terms ''are in the nature of indicia of authority from a governmental unit to pursue some endeavor,'' the term ''similar grant'' should be given the same meaning. *Watts,* 876 F.2d at 1093. Similarly, the court in *In re Goldrich* concluded that § 525(a) did not prohibit consideration of prior bankruptcies in credit decisions, since ''the language of section 525 may not properly be stretched so far beyond its plain terms.'' Goldrich, 771 F.2d at 29. The items enumerated in the statute—licenses, permits, charters, and franchises—are unrelated to insurance. They reveal that the target of § 525(a) is government's role as a gatekeeper in determining who is authorized to pursue certain livelihoods. It is directed at governmental entities that might be inclined to discriminate against former bankruptcy debtors in a manner that frustrates the ''fresh start'' policy of the Bankruptcy Code, by denying them permission to pursue certain occupations or endeavors. The intent of Congress incorporated into the plain language of § 525(a) should not be transformed by employing an expansive understanding of the ''fresh start'' policy to insulate a debtor from all adverse consequences of a bankruptcy filing or discharge. *Toth v. Michigan State Housing Development Authority,* 136 F.3d 477 (6th Cir. 1998) (housing authority did not violate Bankruptcy Code's antidiscrimination provision when it denied debtor's home improvement loan solely because she had received discharge within three years of application). The commenter further stated, if FCIC remains concerned that denying participation until discharge would violate 11 U.S.C.A. 525(a), the commenter

suggested that section 2(k)(2)(i)(E) must be changed to make the ''termination date'' the date of dismissal of the bankruptcy. If disallowing participation during the pendency of a bankruptcy violates 11 U.S.C.A. 525(a), which the commenter does not believe is true, then back dating the termination is also a violation as participation is denied ''during the case but before the debtor is granted or denied a discharge.''

Response: FCIC disagrees with the commenter. The cases cited are not on point because those cases did not involve a debt owed to the governmental unit and the question of ineligibility because the debt was not timely paid. The person had been deemed ineligible because of the bankruptcy. Those cases involved the effects of the bankruptcy, not the effect of the debt. In this case, the person is ineligible because of the debt. Under the Bankruptcy Act since once the petition has filed to have debts discharged, all collection activities must be stayed. If there is no authority to collect the debt during the pendency of the bankruptcy, there is similarly no authority to make the producer ineligible because of the debt. If the bankruptcy petition does not lead to a discharge of debt, the parenthetical sentence in section 2(k)(3)(ii) already states what happens for a dismissal of the bankruptcy petition before discharge.

Comment: Several commenters noted that section 2(l) has the phrase ''of marriage'' added when compared to the equivalent section 2(g) of the Common Crop Insurance Policy. The commenters stated this phrase appears to limit these provisions to dissolution of marriage only so other kinds of dissolution such as dissolution of a partnership are not included. The commenters presumed the phrase was in error since section 2(l)(4) refers to if an insured entity is dissolved and section 2(l)(5) refers to the dissolution of the entity without either 2(l)(4) or 2(l)(5) being restricted to a dissolved marriage.

Response: FCIC agrees with the commenters and will remove the phrase ''of marriage'' since this provision is intended to include all legal types of dissolution.

Comment: A commenter noted that section 2(l)(3)(ii)(A) states ''A new application for insurance must be submitted prior to the sales closing date . . .'' The commenter suggested replacing the phrase ''prior to'' with ''by'' or ''on or prior to'' since as currently written an application submitted on the actual sales closing date could not be accepted.

Response: FCIC agrees with commenter but will replace the phrase ''prior to'' with the phrase ''on or before.'' In addition, FCIC will also make the same change in section 2(l)(4)(ii)(A).

Comment: A commenter stated section 2(o) is burdensome, unnecessary and serves no benefit to report on any crop previously obtained from FSA or an insurance provider and requiring the date obtained and amount of the administrative fee. The commenter asked if this remains in the final rule, then what will be the penalty to the producer if this is not properly reported. The insurance providers do not want to incur a lot of additional expense to track this down when this has very little to no benefit and is already captured by FCIC's past and current processing system.

Response: FCIC agrees and has removed this provision and redesignated section 2(p) and 2(q) as 2(o) and 2(p), respectively. This provision is unnecessary since there are no longer maximum allowable amounts of administrative fees that need to be accounted for.

Comment: Several commenters suggested updating the years in the example given in section 2(q)(2).

Response: FCIC agrees with the commenters and has advanced the years given in redesignated section 2(p)(2) example by two years.

Section 3 Contract Changes

Comment: A commenter questioned in section 3(b) the reference to the actuarial documents. If referencing the actuarial documents, consider referencing the Special Provisions instead, as they are subject to change (see 3(d) and (e) where the Special Provisions are referenced), and are not part of the actuarial documents.

Response: FCIC agrees there may be some confusion with sections 3(d) and 3(e) having a reference to the Special Provisions and section 3(b) referencing the actuarial documents. FCIC agrees with the commenter's suggestion of removing the reference to actuarial documents in section 3(b) and including the actuarial documents in the reference to the policy which, by definition, include the actuarial documents and Special Provisions. FCIC has added the language ''amounts of insurance'' in place of ''actuarial documents.'' In addition, since all information contained in section 3(b) is now viewable on RMA's Web site and in a crop insurance agent's office, insurance providers will no longer provide, in writing, a copy of the changes to the information noted in section 3(b) unless the insurance provider does not have the means to transmit such information by electronic means or the producer elects to receive a paper copy of such information. FCIC has revised section 3(d) to now state, ''Not later than 30 days prior to the cancellation date for the insured crop you will be provided, in accordance with section 20, a copy of the changes to the Basic Provisions, Crop Provisions, CEPP, if applicable, and Special Provisions.'' Distinction needs to be made because changes to the actuarial documents are only viewable on the RMA Web site because they are so voluminous. FCIC has revised section 3(e) to now state, ''Acceptance of all the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.'' FCIC will also make changes accordingly to the notices required in section 20. These changes will reduce the burden of excess distribution of paper policy materials.

Section 4 Insured Crop

Comment: A commenter questioned why section 4(b)(7) is needed when section 4(b)(3) would appear to address any pricing, rating, and other issues contained in the actuarial documents. The commenter stated generally crops insurable on the Special Provisions are also contained in the actuarial documents but the language in section 4(b)(7) creates an insured crop exclusion. The commenter suggested removing this provision.

Response: FCIC agrees section 4(b)(7) is redundant and not necessary. FCIC has removed the provisions in section 4(b)(7) and redesignated section 4(b)(8) as 4(b)(7).

Comment: A commenter suggested in section 4(b)(8) the word ''Uninsurable'' at the end of the second sentence should not be capitalized.

Response: The word ''uninsurable'' is not capitalized in the Proposed Rule, which was published in the **Federal Register**. No change has been made.

Comment: A commenter suggested FCIC add the word ''or'' before ''practice'' and delete the comma after ''practice'' in the second sentence of section 4(c).

Response: FCIC agrees and has revised the provisions accordingly.

Section 5 Insurable Acreage

Comment: Several commenters mentioned FCIC should not capitalize the first word of a parenthetical phrase when the phrase is not a complete sentence. The commenters cited the two parenthetical phrases of section 5(a) where the first parenthetical is a sentence (but does not have a period at the end) and the second is not a complete sentence. The commenters

suggested not capitalizing either of these parenthetical phrases and review others throughout the policy provisions.

Response: FCIC agrees with the commenters and has revised the parenthetical phrases here and throughout the provisions to be lower case when the information contained in the parenthetical is not a complete sentence and has removed all periods within the parenthetical since the punctuation is more appropriate at the end of the provision.

Comment: A commenter noted the provisions in section 5(a)(1) are the exact same or similar to the provisions in the Common Crop Insurance Policy Basic Provisions and the commenter expressed concern that their inclusion in this rule increases the burden on insurance providers to assure compliance with provisions that heretofore were not required.

Response: FCIC understands the concerns of the commenter but the inclusion of this provision provides consistency amongst FCIC crop insurance products. While this is an area coverage policy, the expectation is that producers who purchase the policy have the same chance of making a crop as any other producer. This provision reduces the risk of FCIC insuring acreage that is not capable of producing a crop.

Comment: A commenter stated if ARPI is not offered on forage, consider revising section 5(a)(1)(iii) to remove the reference to pasture or rangeland as insured crops under this rule.

Response: Coverage for forage will be available under ARPI with its own Crop Provisions. Under ARPI, forage is a different crop from pasture or rangeland, and acreage from pasture or rangeland is not insurable as forage. A definition of ''forage'' has been added to the Forage Crop Provisions.

Comment: A commenter questioned in section 5(a)(1)(iv) if the phrases ''Crop Provisions'' or ''Special Provisions'' are considered singular documents or plural ''provisions.'' The commenter stated if the former, the statement, ''. . . specifically allows insurance for such acreage'' is correct; if the latter then the word ''allows'' needs to be change to ''allow.''

Response: These documents are considered plural so FCIC has changed ''allows'' to ''allow.''

Comment: In section 5(b) a commenter recommended FCIC provide clarification if acreage replanted after the final planting date is insured, provided it was originally planted before the final planting date. The commenter suggested FCIC add the word ''originally'' to the draft language so it reads, ''Only the acreage originally planted to the insured crop . . .'' The commenter also stated if this is not the intent of this paragraph, then FCIC should add clarification to let everyone know the situation described previously is not insurable.

Response: FCIC does not provide for or require replanting under the ARPI rule. Therefore, as long as the insured crop is planted on or before the final planting date it is insured, regardless of whether or not it was subsequently replanted. No changes have been made.

Comment: Several commenters questioned the parenthetical phrase ''(We will remove the acreage for which good farming practices were not carried out from the acreage report, no premium will be due, and no indemnity paid)'' in section 5(c)(2). The commenters questioned if this really should only apply to acreage in which good farming practices were not carried out or should this apply to other types of uninsured acreage in the rest of section 5(c).

Response: FCIC has revised the provisions by moving the parenthetical phrase to the stem in section 5 and clarifying that uninsured acreage and any production from uninsured acreage will not be included for the purposes of establishing the final county yield. The ACRSI requires the reporting of all acreage, including uninsured acreage. FCIC will not remove this acreage from the acreage report, but will instead consider this acreage on the acreage report as uninsurable.

Comment: Several commenters expressed concern about section 5(c)(5) only containing a portion of the language which had appeared in the GRP and GRIP Basic Provisions and currently appears in the Common Crop Insurance Policy Basic Provisions. The commenters questioned the omission and if FCIC's intention is for ARPI to only offer insurance for first crop and/or second crop as applicable but not three or more crops even if it is a practice generally recognized for an area. The commenters stated if this is FCIC's intent then any reference to the phrase ''two or more'' should be removed from section 13 and anywhere else it appears in the policy.

Response: FCIC does not intend to only offer insurance for first crop and second crop for ARPI because section 108 of the Agricultural Risk Protection Act of 2000 (ARPA) allows for conditions upon which a third crop planted on the same acreage in the same crop year can be insured. FCIC has added language to the provisions at the end of section 5(c)(5) that will allow for coverage of a third and subsequent crop.

Section 6 Coverage, Coverage Levels, Protection Factor, and Policy Protection

Comment: A commenter noted section 6 provides rules for electing the coverage level and protection factor but not the percentage of the projected price.

Response: The ARPI policy allows the election of a protection factor, which has the same effect on coverage as the selection of a percentage of price.

Comment: Several commenters stated it is their understanding that FCIC has the authority to offer area-wide policies at coverage levels up to 95 percent, but only 90 percent coverage levels have been offered. One commenter believed the higher coverage level would offset sky rocketing production costs and narrowing margins of profit. Another commenter stated since the area-wide policy is structured in a manner that does not allow manipulation by the actions of an individual producer, the 95 percent coverage level could be accurately rated and would provide an appealing alternative for producers in high-yielding regions.

Response: FCIC will take the commenters' recommendation under consideration. FCIC currently considers a 90 percent coverage level to provide an adequate deductible level for insureds consistent with sound insurance principles.

Comment: Several commenters stated they would like to see FCIC offer separate irrigated and non-irrigated practices in more counties. A commenter stated they support the advent of area-wide policies with insurance offers that differentiate between irrigated and non-irrigated practices. The commenters advocated FCIC use actual yield data reported by producers to FCIC to separate NASS data into irrigated and non-irrigated practices in counties where there is irrigation but NASS does not issue practice-specific yields. The commenter also supported allowing producers who have both irrigated and non-irrigated acreage in the same county to have separate units by practice under the area plans of insurance since there will be separate loss determinations by practice.

Response: FCIC will continue to work toward making separate offers for irrigated and non-irrigated practices in more counties, if there is available data to make actuarially appropriate insurance offers. The ARPI production reporting requirement and additional yield data sources, including FCIC data, should assist in providing more insurance offers by practice in the future. If FCIC provides both an irrigated and non-irrigated insurance

offer in a county, then a producer must insure their acreage according to the irrigation practice they actually carry out. Separate practices found on the actuarial documents are treated as separate offers and will have separate loss determinations.

Comment: Several commenters noted that under sections 6(a) through (c) producers have to elect the same plan of insurance (ARP, ARP–HPE, or AYP) for the crop/county, but could elect different protection factors (percentages) and coverage levels for each crop practice/type. The commenters stated this raises concerns by allowing different protection factors and coverage levels by practice and type and there are consequences for allowing elections at this detailed level. The commenters questioned the rationale for allowing these elections within a crop/county.

Response: FCIC understands the commenters concerns, but allowing producers the opportunity to choose different coverage levels by type and practice were allowed in the GRP and GRIP plans of insurance and carried over here. Since producers insured under area plans of insurance are unable to generate a loss at an individual level, the exposure to adverse selection by having different coverage levels for the same crop is greatly diminished. The ability to elect different coverage levels and protection factors by types and practices within a crop allows producers to customize their insurance coverage to better reflect their actual insurance risk by type and practice within a crop. No change has been made.

Comment: Several commenters recommended not capitalizing the first word in the parenthetical phrases in sections 6(c)(1)(ii) and 6(c)(2)(ii).

Response: FCIC agrees and has revised the provisions accordingly.

Comment: Several commenters noted the first parenthetical phrase in section 6(c)(2)(ii) does not have an end parenthesis, and should.

Response: The parenthetical phrase noted by the commenters should not be a parenthetical phrase. FCIC has removed the parenthesis in the first sentence of section 6(c)(2)(ii).

Comment: Several commenters recommended deleting the comma in the phrase ''. . . type, and practice . . .'' in sections 6(c)(2)(iii).

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A commenter recommended in the first sentence of section 6(c)(2)(iii) deleting the phrase ''. . . as long as they are different types or practices . . .'' and also replacing words ''actuarial documents'' with ''Special Provisions.''

Response: FCIC agrees and has removed the phrase ''. . . as long as they are different types or practices . . .'' FCIC disagree with replacing ''actuarial documents'' with ''Special Provisions'' in the first sentence as this term reflects where available types and practices are shown. The reference to ''Special Provisions'' in the second sentence was removed.

Comment: Several commenters recommended in section 6(c)(2)(iii) FCIC consider adding a reference to the insured having to pay administrative fees for both CAT and additional levels of coverage if both levels are elected on different practices/types of a crop/county. The commenters also stated this information is contained in section 7(a)(5), which might be sufficient, but some indication here might be useful.

Response: Section 7 contains the provisions regarding the payment of fees and premium and to avoid any potential conflict or confusion, FCIC has elected not to include a separate reference to the fees in section 6(c)(2)(iii). No changes have been made.

Comment: A commenter questioned in section 6(e) if the phrase ''. . . and the expected county yield and projected price may change each year . . .'' is necessary and recommended the phrase be removed.

Response: FCIC agrees and has revised the provisions accordingly.

Comment: Several commenters suggested adding the word ''the'' between the words ''Multiply'' and ''dollar'' in section 6(f)(1).

Response: FCIC agrees and has revised the provision accordingly.

Comment: A commenter recommended in section 6(g)(2) adding the phrase ''of the projected price'' between the phrases ''Notice of availability'' and ''will be provided''.

Response: FCIC agrees and has revised the provisions accordingly.

Comment: Several commenters recommended in section 6(g)(4) changing the phrase ''change your coverage by the sales closing date'' to ''change your plan of insurance by the sales closing date.'' The commenters stated this would be consistent with the same phrase in section 6(g)(1).

Response: FCIC agrees and has revised the provisions accordingly.

Section 7 Annual Premium and Administrative Fees

Comment: A commenter stated FCIC should consider revising sections 7(a)(1) and (2) by changing the phrase ''actuarial documents'' to ''Special Provisions'' to match the CAT Endorsement which state ''. . . The administrative fee owed is $300 for each crop in the county unless otherwise specified in the Special Provisions.''

Response: FCIC agrees with the commenter and has revised the provisions accordingly. FCIC has also revised the definition of ''administrative fee'' by changing ''actuarial documents'' to ''Special Provisions'' to reflect this change.

Comment: Several commenters recommended FCIC consider combining the information in sections 7(a)(5) and (7) since the limitation of not more than one additional administrative fee and one CAT administrative fee will apply if a producer elects both for the crop in the county. The commenters suggested adding the word ''but'' at the end of (5) followed by the statement currently in (7).

Response: FCIC agrees with the commenters and has revised the provisions in section 7(a)(5) to include the provisions proposed in section 7(a)(7). FCIC has removed section 7(a)(7) and has also removed section 7(a)(6) because this provision duplicates the provision that is now contained in redesignated section 7(a)(5)(ii). FCIC has redesignated sections 7(a)(8) through 7(a)(10) as sections 7(a)(6) through 7(a)(8), respectively.

Comment: A commenter recommended removing the word ''levels'' from section 7(a)(5) since additional level of coverage is composed of multiple levels of coverage and the current use may cause confusion.

Response: FCIC agrees and has revised the provision by removing the word ''levels'' from new section 7(a)(5)(i).

Comment: A commenter stated in section 7(e) the word ''properly'' in the phrase ''properly planted'' is subjective and should be removed.

Response: FCIC agrees with the commenter but will revise the provision by removing the entire phrase ''. . . the insured crop is properly planted by the final planting date and reported on the acreage reporting date . . .'' and replacing it with the phrase ''. . . coverage begins . . .'' This will provide better consistency with other provisions in ARPI and with the Common Crop Insurance Policy Basic Provisions.

Section 8 Report of Acreage and Production

Comment: Several commenters suggested changing the section heading to ''Report of Acreage and Production.''

Response: FCIC agrees and has changed the heading for section 8 accordingly.

Comment: A commenter stated the multiple references of crop, types and practices as shown on the Special Provisions seems redundant to have repeated throughout the rule. The commenter recommended adding definitions of type and practice and including the phrase ''as shown on the Special Provisions'' in the definitions.

Response: FCIC agrees that the repeated use of some phrases throughout the policy can seem redundant. FCIC revised the definitions of type and practice to specify they are as shown on the actuarial documents, and FCIC has removed some of the redundant phrases throughout the provisions.

Comment: Several commenters noted inconsistencies between the definition of ''share'' and section 8. The definition of share states, ''Your percentage of the insured crop that is at financial risk. Premium will be determined on your share as of the acreage reporting date. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the acreage reporting date or on the date of harvest, whichever is less.'' The commenters noted in section 8(c)(2) the acreage report must include ''Your share at the time coverage begins.'' The date coverage begins is addressed in section 10 and, except for the initial year of application (when it is the date the application is submitted and accepted), is the date the insured crop is planted. The commenters asked if section 8(e)(3) allows for revisions to the acreage report to add land acquired after the acreage reporting date under certain circumstances, how would the producer have had an insurable share ''as of the acreage reporting date'' (or on ''the date the insured crop is planted'') on land acquired after that date. The commenters further asked based on the definition of ''share'' how can coverage be added by a revised acreage report if premium is determined on the share as of the acreage reporting date, and indemnities cannot exceed the share as of the acreage reporting date. The commenters stated perhaps this needs to be reworded or otherwise clarified as an exception (as is the case with land/shares acquired by Transfer of Right to an Indemnity). Also several commenters noted section 8(g)(2) addresses when the share is misreported, using the reported share if under-reported and the ''share we determine to be correct'' if over-reported, and asked if this is separate procedure for this particular situation so it does not have to match the share as of acreage reporting date or date of harvest.

Response: FCIC agrees there are inconsistencies between the definition of ''share'' and section 8 and has revised the definition of share to state ''Your insurable interest in the insured crop as an owner, operator, or tenant.'' FCIC has also added a new section 8(f) which states, ''Except as provided in section 8(h), your premium and indemnity, if any, will be based on your insured acreage and share on your acreage report or section 8(e), if applicable.'' FCIC has also redesignated section 8(f) through 8(l) as section 8(g) through 8(m), section 8(m) was redesignated as section 8(r), and changed any applicable section references accordingly. New section 8(f) clarifies how redesignated section 8(h)(2) applies to misreported share.

Comment: A commenter noted section 8(d) states ''We will not insure any acreage of the insured crop planted after the final planting date.'' The commenter asked if the planting date now needs to be captured to determine if the acreage is insurable based on when the insured crop was planted. This section currently does not require that the planting date must be reported as a part of the acreage report. The commenter stated if capturing the planting date is now required, it should be added to this section. The commenter also stated if this is now required, it would be another requirement being added under the new ARPI program when compared to the existing GRP and GRIP plans of insurance. Another commenter asked if replanted acreage seeded after the final planting date is covered under ARPI.

Response: FCIC understands the commenter's concern of adding additional requirements and agrees with the commenter that this language should be added to require insureds to report the planting date on the acreage report to determine if the acreage is insurable. FCIC has added the following language ''. . . and the last date any acreage of the insured crop was planted and the number of acres planted by such date;'' to the end of section 8(c)(1). FCIC does not provide for or require replanting under the ARPI rule and the insurable acreage will be all the acreage planted on or before the final planting date. A parenthetical has been added to clarify that acreage planted for the first time after the final planting date must be reported as uninsurable.

Comment: Several commenters had concerns about the ability of the insurance provider to revise an acreage report as stipulated in section 8(e). The commenters stated section 8(e)(2) introduces a subjective factor and that without parameters will make it virtually impossible for insurance providers to determine that the crop in the county will likely produce at least 90 percent of the expected county yield. The commenters also asked if the insurance providers could make this determination for all the acreage of the insured crop planted in the entire county at any time an insured requests revision of the acreage report and would the insurance provider be able to reject the revised acreage report rather than make this determination. Additionally, the commenters questioned the last sentence of section 8(e)(3). The commenters questioned if this section is intended to refer to land acquired after the acreage reporting date via a Transfer of Right to Indemnity, and perhaps meaning that the requirements in section 8(e)(1) and 8(e)(2) do not apply. Or is it supposed to mean that a landlord who has requested the tenant to insure the landlord's share on the tenant's policy per section 9(a)(ii) cannot try to switch that coverage to his/her own policy (which he/she cannot have as a result) later that year. The commenters stated, as worded, it could prevent an insured from adding coverage to land acquired by becoming a tenant on a share-rent basis because his/her new landlord has coverage on his/her share and the previous tenant did not have coverage. Another commenter noted this section does not contain provisions for inadvertent error (*e.g.* transposition).

Response: FCIC agrees that section 8(e)(2) lacks specific parameters and would be burdensome to the insurance provider to make this kind of determination for the county, and has removed this provision. FCIC agrees with including provisions for inadvertent error and has revised section 8(e)(2) to address such. The last sentence of section 8(e)(3) has been clarified to mean sections 8(e)(1) and 8(e)(2) do not apply to a transfer of coverage so there would not be dual policies.

Comment: A commenter recommended changing section 8(g)(1)(i) from ''A lower liability than the actual, correct liability determined, the production guarantee or amount of insurance on the unit . . .'' to ''A lower liability than the actual, correct liability determined, the amount of insurance on the unit . . .''

Response: FCIC agree with the commenter that redesignated section 8(h)(1)(i) was in error but in addition FCIC also notes that other parts of this provision were in error as well. FCIC has revised redesignated section 8(h)(1)(i) and removed the entire phrase ''the production guarantee or amount of insurance on the unit'' and replaced with the phrase ''the policy protection''

as this term better reflects the liability under an area plan and since units are not applicable.

Comment: Several commenters questioned the order of sections 8(i)(2) and 8(i)(3) as it seems to be in reverse chronological order when compared to the similar sections contained in the Common Crop Insurance Policy Basic Provisions.

Response: FCIC agrees and will reverse the order by moving the provisions in redesignated section 8(j)(2) to 8(j)(3) and moving the provisions from redesignated section 8(j)(3) to 8(j)(2).

Comment: Several commenters recommended adding a hyphen in the first phrase of ''. . . on-farm measurement . . .'' to match the same phrase in the rest of sections 8(i)(5)(i) and 8(i)(5)(ii).

Response: FCIC agrees and has revised redesignated section 8(j)(5)(i) accordingly.

Comment: Many commenters noted that production reporting is a significant conceptual difference from what was required under GRP or GRIP and questioned how FCIC intends to implement this new requirement. The commenters stated the provisions or underwriting guidelines need to specify how production or potential production will be handled. The commenters asked how will acreage that has been pastured or destroyed and will not go to harvest be accounted for and if FCIC will expect insurance providers to appraise this acreage. The commenters asked how FCIC expects to correlate corn production that was harvested as hay, fodder, silage, or earlage. The commenters asked if FCIC intends to use the same production forms as used for crops insured under the Common Crop Insurance Policy. The commenters also stated the ARPI Basic Provisions should include definitions for ''production report'' and ''production reporting date.'' The commenters asked if reported production by types and practices will correspond to the same types and practices as other plans of insurance that require production reporting, and how will differences in units between individual and area plans be handled. The commenters also asked if producers elect ARPI as new insureds will be required to provide a production report for the initial year of coverage, or if production reporting will only apply to carryover insureds. The commenters stated this provision seems to apply only to carryover insureds, as new insureds would not receive the policy provisions containing the production reporting requirement until after they provide an acceptable application. The commenters also asked if ARPI production reports will be subject to APH reviews and whether they will be considered valid certified production reports that can subsequently be used for individual plans of insurance if a producer elects to change the next year. The commenters asked if the yields reported for this program will be subject to the APH rules as outlined in the Crop Insurance Handbook for individual plans of insurance.

Response: FCIC procedures will provide production reporting requirements including procedures for production, potential production, and how ARPI production reports will be used if an insured subsequently transfers to other plans of insurance that use an individual production guarantee. FCIC does not plan to require insurance providers to perform appraisals. In situations where acreage has been destroyed or pastured and will not be harvested, an insured will be required to report the acreage as unharvested in accordance with FCIC procedures. FCIC anticipates that similar production reporting forms used for the Common Crop Insurance Policy will be used for ARPI. FCIC has added definitions for the terms ''production report'' and ''production reporting date'' to the ARPI Basic Provisions. The insurable types and practices of a crop insured under an area plan of insurance have, in the past, been different from individual plans of insurance. FCIC intends to use similar types and practices by crop between area and individual plans of insurance. All insureds will provide a production report by the production reporting date at the conclusion of the crop production cycle of the current crop year. FCIC anticipates ARPI production reports being subject to the requirements of Appendix IV of the Standard Reinsurance Agreement, and FCIC will work with insurance providers as appropriate.

Comment: Many commenters expressed concerns about production reporting for forge and livestock producers. A commenter stated they agree that the yields for the ''major'' crops should be reported, but reporting the yields for forage crops will be burdensome as it is too cumbersome and difficult to accurately keep track of three or four harvest cycles of forage. This requirement will cause producers to either not purchase coverage as they are unwilling or unable to accurately report their yields or to simply guess at a yield because whatever value they report will not change their insurance coverage. Another commenter stated that requiring production reports under ARPI for forage production could prove problematic. Many producers feed their forage to livestock, and have, in the past, elected to insure it under an area plan of insurance in order to avoid the requirement to provide livestock feeding records which are difficult and time consuming to provide the required detail in order to be considered adequate records.

Response: FCIC recognizes there may be certain crops, like forage for which production reporting may be problematic. FCIC has added the following phrase ''. . . unless otherwise specified in the Special Provisions, . . .'' to section 8(l). This additional language will allow FCIC to exclude certain crops from production reporting if stated on the Special Provisions.

Comment: Several commenters suggested in section 8(k) changing the phrase ''on the date'' to ''by the date'' to be consistent with the same phrase in section 8(l).

Response: FCIC agrees and has revised redesignated section 8(l) accordingly.

Comment: Several commenters noted sections 8(k) and 8(l) refer to the deadline for submitting production reports as ''the date specified in the Special Provisions'' and it is unclear what date on the Special Provisions is being referenced since a sample Special Provisions was not provided. A commenter suggested giving this date a name designation, *i.e.* production reporting date. Several commenters questioned how the ARPI production reporting date will correspond with the ARPI acreage reporting dates, end of insurance period dates, dates of normal harvest, and dates by which any ARPI claim will be settled. The commenters recommended making the production reporting dates for ARPI similar to the dates for individual plans of insurance and having a common date would be beneficial in administering this new requirement for the insured, agent, and insurance provider. Another commenter encouraged FCIC to coordinate reporting with USDA, so the producer is not required to provide multiple reports of the same information, and a single report containing the necessary information for multiple agencies is desirable.

Response: FCIC agrees the date is unclear and in both redesignated sections 8(l) and 8(m) has changed the phrase ''. . . the date specified in the Special Provisions . . .'' to ''. . . the production reporting date specified in the actuarial documents . . .'' The end of insurance and harvest dates are not applicable to ARPI, but the production reporting date by crop will be a date in advance of the final county yield and

final county revenue determination date specified in the ARPI Crop Provisions. FCIC is working toward having a common production reporting date by crop for all plans of insurance. FCIC is striving to establish common reporting of information consistent with the ACRSI and will also keep in consideration the common reporting of production consistent with USDA requirements and practices.

Comment: Numerous comments were received that expressed concern regarding the provisions in section 8(l) which indicate that if an insured does not submit a production report by the required date, the yield used to determine the final county yield will be equal to the expected county yield and the insured would not be eligible for any potential indemnity. The commenters assumed insureds would still be required to pay their premium even though they could not receive an indemnity, which is a severe penalty, especially when the reported production has no bearing on the amount of coverage offered under ARPI. Several commenters stated this penalty for not reporting yields is excessive and unjust since yields are needed for program integrity, not the insured's insurability. A commenter noted that under individual plans of insurance where the insured's yields are used to establish the coverage offered, if the production is not reported then an assigned yield of seventy-five percent is applied to the previous years approved yield, but coverage continues to be offered at a reduced amount. The commenter recommended a more reasonable approach would be to allow the insured to have coverage but limit the coverage to the lowest protection factor. Another commenter suggested a one-year grace period before elimination of a potential indemnity for failure to report production. Another commenter encouraged insureds to report annual production information and also encouraged FCIC to establish procedures for late reporting due to extenuating circumstances that would allow an indemnity to be paid. Another commenter suggested in section 8(l) adding the word ''harvest'' in front of the word ''price.''

Response: FCIC agrees the proposed penalty for not reporting production could be considered excessive. FCIC agrees that a more reasonable penalty would be to limit coverage. FCIC has revised the provisions in redesignated section 8(m) that involve the failure to provide a production report to no longer deny the indemnity but instead to limit the following year's protection factor to the lowest protection factor offered. FCIC will consider procedures for instances of late reporting, and FCIC may allow late reporting under certain circumstances such as widespread late harvesting in an area and has added language to allow such discretion. In addition, FCIC has added new sections 8(n) through 8(p), which include provisions for inaccurate production reports, lack of verifiable records, and misreported production reports similar to the Common Crop Insurance Policy Basic Provisions. FCIC has also added new section 8(q) which includes provisions for not reporting production or misreporting production and then changing to another plan of insurance the following year. FCIC agrees with the commenter's suggestion of having a grace period. FCIC will allow a one-year grace period the initial crop year of ARPI implementation before imposing provisions for failing to report production. Regarding the comment of adding the word ''price'' before ''harvest'' FCIC removed from redesignated section 8(m) the phrase containing the word ''price'' so it is not necessary to add the word ''harvest'' before the word ''price.''

Comment: Several commenters questioned what are the ''errors'' being referenced in section 8(m) as the word error is not used anywhere else in this section. The commenters suggested adding clarification as to what the errors are or in which sections those errors are listed. One commenter suggested adding some additional text as errors in reporting extend beyond acreage but to remove the reference to yield, as this section does not address yield errors. The commenter suggested revising the first sentence to state, ''Errors in reporting acreage, share, and other information required in this section, may be corrected by us at the time we become aware of such errors.''

Response: FCIC agrees and has revised redesignated section 8(n) as suggested providing more clarification of what errors may be corrected by the insurance provider.

Section 9 Share Insured

Comment: A comment was received regarding differing shares and how share must be reported separately and not combined or commingled with other shares. The commenter stated this has caused problems in the past with single line reporting and as the new policy requires production reported by farm, tract, and field (CLU) so should the acreage report.

Response: FCIC is unsure about the commenter's question as FCIC does not require production reported by farm, tract, and field (CLU) and FCIC already has language in section 8(c) that requires acreage reporting by share. No changes have been made.

Comment: Several commenters stated the reference in section 9(b)(2)(i) to sections 18(a)(1) and (2) is incorrect since those sections do not exist in the ARPI Basic Provisions.

Response: FCIC agrees and has updated the reference to section 18(c)(1) and (2) in the provisions.

Comment: Several commenters requested deleting the comma following ''etc.'' at the end of the parenthetical phrase in section 9(c).

Response: FCIC agrees with the commenters and has revised the provisions accordingly.

Section 10 Insurance Period

Comment: Several commenters noted section 10 specifies when ARPI coverage begins but asked should there not also be some indication of when the insurance period ends.

Response: FCIC believes an end of insurance period is unnecessary since there is no individual loss adjustment performed for area plans of insurance. The insurance period effectively ends when harvest is generally complete for the area and FCIC determines the final county revenues or final county yields. No changes have been made.

Section 11 Causes of Loss

Comment: Several commenters questioned the phrase ''natural occurrences'' in section 11(a). One commenter asked how is a loss of revenue that is price or market driven related or caused by natural occurrences, and are natural occurrences and natural causes the same thing. Several commenters asked if there is no need to specify the natural occurrences that are considered insured causes of loss other than excluding failure to follow good farming practices. The commenters also asked why producers would be required to submit their individual production history as proposed when this indicates that information is unrelated. Another commenter recommended moving the word ''widespread'' from before the phrase ''loss of revenue or'' to after the phrase.

Response: FCIC agrees the wording in section 11(a) is confusing. Section 508(a) of the Act expressly states that insurance is only available for flood, drought, or other natural disaster. This would apply to both area and individual plans of insurance. FCIC agrees that the term ''widespread'' is ambiguous and instead has revised the provisions to clarify that there must be a natural cause of loss that results in the final county

yield or final county revenue less than the trigger yield or trigger revenue. The prices used to establish the dollar amount of insurance and whether an indemnity is due are generally based on the commodity markets and are presumed to be the result of natural causes. FCIC is not certain what the commenters mean when they say the requirement to submit individual production records is unrelated. However, if the commenters mean the submission of individual production records is unnecessary to calculate the guarantee or the indemnity, the commenter are correct, but the individual production record could be used as part of the determination for the area wide guarantee and indemnity.

Comment: A commenter asked how the insurance provider will make a failure to follow good farming practices determination based on section 11(b) considering losses are triggered at the county level and individual loss adjustment or inspections do not apply. Another commenter noted the word ''count'' should be changed to ''county'' Several commenters suggested adding commas before the phrase ''. . . or planting. . . '' and after the phrase ''. . . expected county yield. . .''.

Response: Section 508(a)(3) of the Act provides that failure of the producer to follow good farming practices is not a covered cause of loss. This requirement applies to all plans of insurance offered by FCIC. While individual loss adjustment and inspections are not required under ARPI, insurance providers are authorized to perform growing season inspections. However, there have been numerous instances where FCIC or insurance providers have learned that producers may be using practices that do not qualify as good farming practices. If there are any questions, the definition of ''good farming practices'' allows the producer or the insurance provider to contact FCIC to determine whether or not production methods used by the producer will be considered to be good farming practices. FCIC agrees with the commenter that the word ''count'' should be ''county'' and agrees with the other commenter's suggestion of the added commas, and has revised the provisions accordingly.

Section 12 Triggers, Final Policy Protection, Payment Factor, and Indemnity Calculations

Comment: Several commenters stated producers may question why they are required to submit their production records since individual farm revenues and yields are not considered when calculating losses under ARPI.

Response: FCIC agrees that individual farm revenues and yields are not considered when calculating losses under ARPI, but with the possibility of less available data from other sources such as NASS and producers seeking expansion of ARPI and separation of practices, additional credible data is required and the only source of such data may be within the crop insurance program. Many producers already keep this information on a year-to-year basis and many insurance providers also maintain records containing this information to use when producers need their actual production history when changing to an individual plan of insurance.

Comment: Several commenters stated FCIC should change the semicolon at the end of section 12(b) to a colon.

Response: FCIC agrees and has revised the provisions accordingly.

Section 13 Indemnity and Premium Limitations

Comment: Several commenters suggested FCIC add a comma after the phrase ''two of the last four crop years'' in section 13(d)(2).

Response: FCIC agrees and has revised the provisions accordingly.

Section 14 Organic Farming Practices

Comment: Several commenters noted section 14(c) identifies certified organic, transitional acreage, and buffer zone acreage as being insurable under the organic farming practice. The commenters stated FCIC needs to resolve section 14(e) since it says to separate certified organic and transitional acreage on the acreage report but makes no mention of how to report buffer zone acreage.

Response: FCIC agrees and has removed section 14(e) as this section is redundant with section 8(c) which already requires the reporting of acreage by practice. Any insurable or uninsurable buffer zone acreage will be reported as part of the practice that it buffers.

Section 15 Yields

Comment: Several commenters commended FCIC's decision to utilize additional data sources beyond only the county level production data provided by NASS. The commenters stated NASS county estimates have proved to be unreliable and likely contributed to area plans of insurance being discontinued in some locations. Several commenters stated that FCIC's proposal to incorporate their own data, as well as other USDA sources, will improve the accuracy and reliability of the yield estimates and ultimately the program's performance. Several commenters stated they would also encourage FCIC to explore the possibility of also relying on data from the FSA and classing data from the USDA Agricultural Marketing Service, and for cotton to use NASS data on cotton ginnings. Several commenters stated that while they encourage FCIC to explore the use of additional data, they requested that FCIC publish their methodology, their sources for arriving at county yield estimates, and their explanation for any discrepancies with NASS. They stated it is important that there be sufficient transparency regarding any adjustments to the data or methods used to resolve discrepancies among various USDA data, as well as possible other data sources.

Response: FCIC appreciates the support for its efforts. ARPI was written to provide FCIC with the flexibility to use the most credible yield data available in the future for providing insurance offers and determining indemnities. FCIC will continue to evaluate yield data sources but it is not possible to publish the methodology used to determine area yields because it will depend on the source of the data, the credibility, and numerous other factors. However, anyone can request the methodology used to establish any particular yield.

Comment: A commenter urged FCIC to make every effort to preserve the accuracy and reliability of the yield estimation process. The commenter stated that while not perfect, NASS datasets provide the longest most consistent record of production in a county and should continue to be the basis from which county yield estimates are calculated. The proposed use of alternative data sets should be used primarily to verify the accuracy of the calculations made by NASS. The commenter then stated when FCIC identifies inaccuracies, FCIC should publish the methodology they use to resolve such discrepancies in order to ensure the ongoing support and understanding of producers and insurance providers.

Response: FCIC needs the flexibility to use data sources other than NASS yield data, because of questions regarding its continued availability, requests for expansion, and the division of practices. However, FCIC plans to continue to use NASS yield data in the future for area plans of insurance but it may use other sources of data if they are more credible.

Comment: Several commenters stated FCIC should review expected county yields with the goal of ensuring that long-term trends produce expected county yields that are indicative of

current levels. Another commenter stated a ten-year APH yield should be assigned to each individual county as they are more reliable and reflect up-to-date cultural practices and production trends.

Response: As stated above, FCIC plans to use the most credible data and methodology to establish yields and will consider the suggestions in this process.

Comment: A commenter stated the expected county yields should closely reflect recent yield history and not use long term, historical data that penalizes producers for recent variety and production innovations and does not provide adequate insurance coverage.

Response: As stated above, FCIC plans to use the most credible data and methodology to establish yields and will consider the suggestions in this process.

Comment: Several commenters stated throughout this entire section, it is implied that FCIC retains sole discretion in determining credibility, application, and source of data utilized in establishing yields. This approach is open-ended and subjective. The commenters stated the provisions need to include the specific criteria FCIC will utilize in making these determinations as well as prioritize and list all data sources that might be considered.

Response: FCIC agrees that the approach appears open-ended and subjective but RMA cannot predict what data sources may be available in the future and what may best reflect the expected or final yields in a county. Therefore, flexibility is needed to ensure that the best available data can be used. FCIC has rewritten this section to specify that the actuarial documents will show what data source will be used for determining the yield and that data source will remain consistent throughout the insurance period unless unforeseen events occur that would result in the need for other data sources to be used. The methodology used to adjust any yield is available upon request.

Comment: Several commenters stated if the language in section 15(b) is going to allow FCIC to make an exception in the data source used for a specific county in any given crop year, then the commenters suggested section 15(a) should be changed from ''Yields used under this insurance program for a crop, may be based on'' to ''Yields used under this insurance program for a crop generally will be based on.'' Another commenter stated FCIC should consider expanding the authority in section 15(b) to include nationwide determinations. Also, the commenters stated the phrase ''not withstanding'' should be changed to one word.

Response: FCIC agrees with the commenters that the yields section is unclear. FCIC will revise the language currently in section 15(b) to be clearer when it is applicable and revise the rest of section 15 to clarify how the yields are established.

Comment: Several commenters made suggestions regarding changing section 15(d). One commenter stated it is one thing to suggest data used to establish the expected yield is no longer available to establish the final county yield but to suggest the data used to establish the expected yield was not credible to begin with is something else entirely. The commenter suggested deleting the phrase ''or credible'' or clarify by saying FCIC determined the data is no longer credible due to changes occurring during the crop year. Several commenters asked when will insurance providers and producers be notified that the data source identified in the actuarial documents is not available or credible so that FCIC will determine the final county yield based on the most accurate data available.

Response: FCIC agrees and for clarity has revised the provisions in redesignated section 15(b). A provision has been added to specify that FCIC with provide notice of the data source used to establish the final county yield, if different from the data source used to establish the expected county yield, and the reason for the change when it publishes the final county yields.

Comment: Several commenters objected to section 15(h) which states, ''If there is not credible data available from any source, as determined at the sole discretion of FCIC, to establish the final county yield in accordance with this section, no coverage for the crop year will be provided and your premium will be refunded.'' The commenters stated it is unreasonable to make this determination at the end of the crop year and justify it by merely returning the producer's premium. If this possibility exists, the decision should be made at the beginning of the crop year to not offer ARPI coverage so producers can make other risk management decisions including electing another plan of insurance. Another commenter asked when will this determination be made and would this present problems for producers whose loans were dependent on their having crop insurance.

Response: FCIC agrees and has removed this provision from the rule. FCIC will still provide coverage and FCIC will determine the final county yields based on the most accurate data available from a data source determined by FCIC.

Section 16 Assignment of Indemnity

Comment: Several comments recommended making ''lienholder'' one word throughout section 16.

Response: FCIC agrees and has revised the provisions accordingly.

Section 18 Other Insurance

Comment: A commenter noted this proposed policy does not allow multiple policies issued or reinsured by FCIC for the same crop in the county. The commenter stated they would encourage FCIC to consider allowing producers to combine various crop insurance policies to obtain the desired coverage level for the crop. The commenter suggested wording the restriction like ''no persons may have in force more than one insurance policy issued or reinsured by FCIC covering the same portion of crop revenue or yield, in the same county/parish for the same crop year.''

Response: The commenter is proposing a substantive change that would require a legislative change because the Act currently only allows producers to elect area or individual coverage but not both. No change was made.

Comment: A commenter recommended in sections 18(c)(1) and (2) changing the phrase ''additional level of coverage policy'' to ''additional coverage policy'' and changing the phrase ''CAT level of coverage policy'' to ''CAT policy.''

Response: FCIC agrees and has revised the provisions accordingly.

Section 20 Notices

Comment: Several commenters stated section 20(a)(2) is not grammatically correct and suggest adding the word ''the'' to the start of the sentence.

Response: FCIC agrees and has revised the provisions accordingly. In addition, FCIC has revised section 20(b) to be consistent with revisions to the contract change provisions contained in section 3. All of the policy information that is subject to change contained in section 3(b) is now viewable on RMA's Web site and available in a crop insurance agent's office. Therefore, insurance providers will no longer have to provide a written notice of the changes to this policy information unless the insurance provider does not have the means to transmit such information by electronic means or the producer elects to receive a paper copy of such policy information. These changes will reduce the burden of excess distribution of paper policy materials.

Section 21 Access to Insured Crop and Records, and Record Retention

Comment: Several commenters asked FCIC to consider if there is a way to abbreviate the phrase ''any employee of USDA authorized to investigate or review any matter related to crop insurance'' which is repeated five times throughout sections 21(a) thru (d). The commenters suggested after the first occurrence referring and using ''authorized employee of USDA'' or adding a definition in section 1.

Response: FCIC agrees with the commenters and after the first occurrence has changed the phrase ''any employee of USDA authorized to investigate or review any matter related to crop insurance'' to ''authorized employee of USDA'' in sections 21(b) thru 21(d).

Comment: Several commenters noted in section 21(e) the ARPI provisions state the failure to provide needed records will result in a determination that no indemnity is due for those acres in which the records are not provided. The commenters stated this is different from similar provisions in the Common Crop Insurance Policy Basic Provisions which states that no indemnity is due for the crop year in which such failure occurred. The commenters stated the APRI language implies that some insured acreage on a policy or even a type or practice may still be eligible for an indemnity but some acreage may not. The commenters recommended the provisions need to specify how unavailability of any particular record will be allocated to any specific acreage on the policy.

Response: FCIC agrees with the commenters and has removed the phrases ''maintain or provide any required records'' and ''no indemnity is due for those acres in which the records are not provided'' and has revised this provisions to be consistent with the Common Crop Insurance Policy Basic Provisions.

Section 23 Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

Comment: Several commenters suggested FCIC combine sections 23(a) and (b) by putting the language in section 23(b) immediately after the last sentence in section 23(a).

Response: FCIC agrees with the commenters and has moved all the language from section 23(b) to the end of section 23(a). However, FCIC has separated section 23(a) into paragraphs to improve readability. FCIC has also redesignated sections 23(c) through 23(h) as sections 23(b) through 23(g), respectively.

Comment: A commenter stated in section 23(c) it seems somewhat redundant to repeat the phrase ''what constitutes a good farming practice'' five times throughout section 23(c) even though this is comparable to the Common Crop Insurance Policy Basic Provisions. The commenter suggested FCIC delete the repeated phrase.

Response: FCIC has considered this change but does not know how it can revise redesignated section 23(b) by removing the phrase ''what constitutes a good practice'' without substantially reducing clarity. No change has been made.

Comment: Several commenters suggested in the last sentence of section 23(e)(3)(iii) deleting the word ''to'' and the word ''is'' from the phrase ''you must to request a determination of non-appealability from the Director of the National Appeals Division is not later than''.

Response: FCIC agrees and has revised the provisions in redesignated section 23(d)(3)(iii) accordingly.

Comment: Several commenters noted in section 23(f) the phrases ''this policy'' and ''your policy'' are used which is consistent with the Common Crop Insurance Policy Basic Provisions. The commenters suggested in the last sentence changing the phrase ''your policy'' to ''this policy.''

Response: FCIC has considered this change but it does not substantially clarify the rule or improve readability. No change has been made.

Section 24 Interest Limitations

Comment: Several commenters stated the opening sentence in the first paragraph in section 24 should end with the phrase ''as specified in the applicable Crop Provisions'' instead of ''as specified on the applicable crop provisions.''

Response: FCIC agrees and has revised the provisions accordingly.

Section 28 Concealment, Misrepresentation, or Fraud

Comment: A commenter recommended adding a comma in section 28(e) after the phrase ''If you willfully and intentionally provide false or inaccurate information to us.''

Response: FCIC agrees and has revised the provision.

Section 407.11 Area Risk Protection Insurance for Corn

Corn Crop Provisions Section 2—Insured Crop

Comment: Several commenters asked FCIC to consider rephrasing section 2(b) to avoid referencing section 2(a)(1) twice.

Response: FCIC has considered this change and because section 2(b) is corn other than what is referenced in section 2(a)(1) but it references a corn type that is similar to that referenced in section 2(a)(1), there needs to be the second cross reference to section (2)(a)(1) to distinguish between the high-oil and high-protein corn insured in sections 2(a)(1) and 2(b). No change has been made.

Comment: Several commenters recommended moving section 2(b)(1) to the end of section 2(b) before the colon and then renumbering sections 2(b)(2) and 2(b)(3) accordingly as sections 2(b)(1) and 2(b)(2).

Response: FCIC agrees and has revised the provisions accordingly.

Section 407.12 Area Risk Protection Insurance for Cotton

Cotton Crop Provisions—Section 2—Insured Crop

Comment: Several commenters questioned why two situations in a list of what is not insured in the GRP Cotton Crop Provisions were omitted from the ARPI Cotton Crop Provisions. The two omitted situations were ''Grown on acreage in which a hay crop was harvested in the same calendar year unless the acreage is irrigated'' and ''Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than 50 percent of the small grain plants reach the heading stage.'' The commenters asked are these planting practices considered insurable under ARPI or are they perhaps going to be moved to the Special Provisions.

Response: FCIC agrees and has added these provisions to section 2(b). There may be areas where these practices are insurable and they will be specified in the Special Provisions.

Comment: Several commenters recommended moving section 2(c)(1) to the end of section 2(c) before the colon and then renumbering sections 2(c)(2) and 2(c)(3) accordingly as sections 2(c)(1) and 2(c)(2). Commenters also noted a period should be added to the end of section 2(c)(2).

Response: FCIC agrees and has revised the provisions accordingly.

Section 407.13 Area Risk Protection Insurance for Forage

Forage Crop Provisions—General

Comment: A commenter asked why forage is included in this product, and will forage be limited to the AYP. The commenter also asked why sugarcane is

not included as an insurable ARPI crop since sugar is traded on the commodities market giving sugarcane an advantage over forage.

Response: FCIC included forage as an insurable crop under ARPI because forage was an insurable crop with active business under GRP. FCIC will only offer AYP for forage. Sugarcane is not an insurable crop under ARPI because sugarcane is insured under an area plan of insurance submitted by a private party under section 508(h) of the Act.

Forage Crop Provisions—Section 1 Definitions

Comment: Several commenters noted the definition of ''planted acreage'' has information that overlaps with the same term in the ARPI Basic Provisions. The commenters asked why the word ''spread'' is used instead of the word ''placed'' in the phrase ''land on which seed is initially spread.'' The commenters also asked why the word ''proper'' is used instead of the word ''correct'' in the phrase ''incorporated into the soil in a timely manner and at the proper depth.''

Response: FCIC agrees with the commenter that the definition of ''planted acreage'' in the Crop Provisions overlaps with the same term in the Basic Provisions and the definition is not necessary in the Forage Crop Provisions. FCIC has removed the definition of ''planted acreage'' from the Crop Provisions.

Forage Crop Provisions—Section 7 Annual Premium

Comment: A commenter stated the phrase ''in lieu of section 7(f) of the ARPI Basic Provisions'' is incorrect and should read ''in lieu of section 7(e) of the ARPI Basic Provisions.''

Response: FCIC agrees and has revised the provisions accordingly.

Section 407.15 Area Risk Protection Insurance for Grain Sorghum

Grain Sorghum Crop Provisions—Section 2 Insured Crop

Comment: Several commenters recommended moving section 2(b)(1) to the end of section 2(b) before the colon and then renumbering sections 2(b)(2) and 2(b)(3) accordingly as sections 2(b)(1) and 2(b)(2).

Response: FCIC agrees and has revised the provisions accordingly.

Section 407.16 Area Risk Protection Insurance for Soybean

Soybean Crop Provisions—Section 1 Definitions

Comment: Several commenters noted the definition of ''planted acreage'' has information that overlaps with the same term in the ARPI Basic Provisions. The commenters asked why is the word ''spread'' used instead of the word ''placed'' in the phrase ''land on which seed is initially spread.'' The commenters also asked why the word ''proper'' is used instead of the word ''correct'' in the phrase ''incorporated into the soil in a timely manner and at the proper depth.''

Response: FCIC defined ''planted acreage'' in the Crop Provisions to allow for insurable methods of planting acreage that are in addition to the definition of ''planted acreage'' contained in the Basic Provisions. The language noted by the commenters has not been revised but FCIC has added the phrase ''unless otherwise specified in the Special Provisions'' to disallow insurability of the planted acreage as defined in the Crop Provisions if necessary in certain areas.

Section 407.17 Area Risk Protection Insurance for Wheat

Wheat Crop Provisions—Section 1 Definitions

Comment: Several commenters noted the definition of ''planted acreage'' has information that overlaps with the same term in the ARPI Basic Provisions and may not be sound. The commenters asked why is the word ''spread'' used instead of the word ''placed'' in the phrase ''land on which seed is initially spread.'' The commenters also asked why the word ''proper'' is used instead of the word ''correct'' in the phrase ''incorporated into the soil in a timely manner and at the proper depth.''

Response: FCIC defined ''planted acreage'' in the Crop Provisions, to allow for insurable methods of planting acreage that are in addition to the definition of ''planted acreage'' contained in the Basic Provisions. The language noted by the commenters has been revised and is worded similar to the definition of ''planted acreage'' contained in the Crop Provisions used for wheat individual plans of insurance. No change has been made.

In addition to the changes described above, FCIC has made the following changes to the ARPI Insurance Regulations:

1. Since FCIC does not approve insurance forms, FCIC has revised paragraph (a) of part 407.8 to clarify the application for insurance form is developed in accordance with standards established by FCIC.

In addition to the changes described above, FCIC has made the following changes to the ARPI Basic Provisions:

1. FCIC revised the definition of ''payment factor'' to include that this factor will be no greater than 1.0. This change will provide clarity in ARPI indemnity calculations.

2. FCIC added the following language, ''unless otherwise specified in the Special Provisions'' to the end of the definition of policy protection. This additional language will allow FCIC the flexibility to modify as appropriate the method of calculating the policy protection in the event of regulatory changes from subsequent Farm Bill legislation.

3. FCIC is in the process of revising ineligibility provisions in 7 CFR Part 400 Subpart U, and as a result FCIC has made the following ARPI changes to section 2. FCIC revised section 2(k)(1)(i)(B) by replacing the language, ''. . . overpaid indemnity . . .'' with, ''. . . overpaid indemnity and any other amounts due, including but not limited to, premium billed with a delinquent date after the termination date for the crop year in which premium is earned, . . .'' FCIC revised section 2(k)(2)(i)(B) by adding the following language, ''. . . including but not limited to, premium billed with a delinquent date after the termination date for the crop in which premium is earned, . . .'' after ''For a policy with other amounts due, . . .'' FCIC revised section 2(p) by adding the word ''voidance'' at the beginning and replacing the word ''violation'' with ''. . . your policy is voided due to a conviction . . .''

4. In section 5(c)(4), added parentheticals around the phrase ''*e.g.,* if the first insured crop under this policy consists of 40 acres, or the first insured crop unit insured under another policy contains 40 planted acres, then no second crop can be insured on any of the 40 acres.''

5. Changed the title of section 7 from ''Administrative Fees and Annual Premium'' to ''Annual Premium and Administrative Fees'' to be consistent with the section of the same name in the Common Crop Insurance Policy Basic Provisions.

6. FCIC identified a payment factor calculation error for Area Revenue Protection in section 12(g)(1)(iii). Using the expected county revenue in section 12(g)(1)(iii) was in error as the incorrect answer is derived when the harvest price is greater than the projected price for the Area Revenue Protection plan of insurance. FCIC split out and moved the payment factor calculation for Area Revenue Protection with the Harvest Price Exclusion from section 12(g)(1) to section 12(g)(2) and redesignated the payment factor calculation for Area Yield Protection from section 12(g)(2) to new section 12(g)(3). FCIC replaced using expected county revenue

contained in section 12(g)(1)(iii) with the new calculation of multiplying the expected county yield by the greater of projected or harvest price. FCIC added a new section 12(g)(1)(iv) to multiply the results of (ii) and (iii). FCIC redesigned the rest of section 12(g)(1) accordingly and any cross-references accordingly. For new section 12(g)(2)(iii), FCIC replaced using expected county revenue with the new calculation of multiplying the expected county yield by the projected price. The remaining portion of new section 12(g)(2) was made similar to section 12(g)(1).

7. FCIC has added section 22 for [FCIC policies].

8. In accordance with the Food, Conservation, and Energy Act of 2008 (also known as the 2008 Farm Bill), the premium billing date for many crops were moved to August 15th. Section 22(a)(1) had specified that interest would start to accrue the first day of the month following the premium billing date. This results in producers having only 15 days to pay their premium before interest will start to accrue. As a result, FCIC has revised section 22(a)(1) by adding language that will provide a minimum of 30 days from the premium billing date before interest will start to accrue on premium amounts or administrative fees owed to FCIC.

9. FCIC has added section 23 for [FCIC policies].

10. As a result of the payment factor calculation error found in section 12(g)(1), FCIC has revised the indemnity calculation examples in section 30 for Area Revenue Protection and Area Revenue Protection with Harvest Price Exclusion accordingly. For the Area Revenue Protection example this change results in the payment factor contained in step nine changing from .371 to .385 and the indemnity in step ten changing from $26,371 to $27,367. For the Area Revenue Protection with Harvest Price Exclusion example the calculation changes result in no change to the payment factor or indemnity.

In addition to the changes described above, FCIC has made the following changes to the ARPI Crop Provisions:

1. Currently there are two acreage reporting dates for forage production. For forage production insured under the individual plans of insurance there is a fall acreage reporting date, and for forage production insured under the area plans of insurance there is a spring acreage reporting date. FCIC is evaluating a common acreage reporting date for forage production insured under the individual plans of insurance and under the area plans of insurance to meet the ACRSI effort to standardize information collection across the USDA. In order to facilitate any future changes to the ARPI forage acreage reporting date, FCIC added the phrase ''or as specified in the Special Provisions'' to section 6 of the Forage Crop Provisions to allow for the modification of program dates by the Special Provisions.

2. FCIC has determined that section 3 in each of the Crop Provisions is unnecessary and has removed this section and renumbered the remaining sections accordingly in each of the Crop Provisions.

3. FCIC has revised redesignated section 3 of all the Crop Provisions to allow the payment determination dates and indemnity payment dates to be changed if specified otherwise in the Special Provisions.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make a rule effective less than 30 days after publication in the **Federal Register** exists when the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this final rule, it would be contrary to the public interest to delay its implementation because public interest is served by implementing the new Area Risk Protection Insurance product which does the following: (1) Replaces the GRP and GRIP plans of insurance by offering Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, or Area Yield Protection, all within one Basic Provisions and the applicable Crop Provisions whereby reducing the amount of information for a producer to read to make risk management decisions; (2) establish common crop pricing between plans of insurance; (3) improve program performance; and (4) reduce fraud, waste, and abuse. Delaying the implementation of these provisions, which make a sounder, more stable program, would be contrary to the public interest.

If FCIC is required to delay the implementation of this rule until 30 days after the date of publication, the provisions of this rule could not be implemented until the 2015 crop year for those crops having a contract change date prior to the effective date of this publication.

For the reasons stated above, good cause exists to make these policy changes effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 407

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation revises 7 CFR part 407, Group Risk Plan of Insurance Regulations effective for the 2014 and succeeding crop years, to read as follows:

PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS

Sec.

407.1 Applicability.
407.2 Availability of Federal crop insurance.
407.3 Premium rates, amounts of protection, and coverage levels.
407.4 OMB control numbers.
407.5 Creditors.
407.6 [Reserved]
407.7 The contract.
407.8 The application and policy.
407.9 Area risk protection insurance policy.
407.10 Area risk protection insurance for barley.
407.11 Area risk protection insurance for corn.
407.12 Area risk protection insurance for cotton.
407.13 Area risk protection insurance for forage.
407.14 Area risk protection insurance for peanuts.
407.15 Area risk protection insurance for grain sorghum.
407.16 Area risk protection insurance for soybean.
407.17 Area risk protection insurance for wheat.

Authority: 7 U.S.C. 1506(l), 1506(o).

§ 407.1 Applicability.

The provisions of this part are applicable only to those crops for which a Crop Provision is contained in this part and the crop years specified.

§ 407.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this part on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501–1524) (Act). The crops and counties shall be designated by the Manager of the Federal Crop Insurance Corporation (FCIC) from those approved by the Board of Directors of FCIC.

(b) The insurance is offered through insurance providers reinsured by the FCIC that offer contracts containing the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by FCIC. FCIC may offer the contract for coverage contained in this part and part 402 of this chapter directly to the insured through the Department of Agriculture if the Secretary

determines that the availability of local agents is not adequate. Those contracts are specifically identified as being offered by FCIC.

(c) No person may have in force more than one insurance policy issued or reinsured by FCIC on the same crop for the same crop year, in the same county, unless specifically approved in writing by FCIC.

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract authorized under the Act that provides coverage for the same loss on the same crop for the same crop year in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the FCIC that the multiple contracts of insurance were without the fault of the person.

(1) If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for indemnity or premium will attach to the contracts canceled as specified in paragraphs (d)(1)(i) and (ii) of this section.

(e) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract (see § 407.9, section 22).

(f) A person whose contract with FCIC or with an insurance provider reinsured by FCIC under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain crop insurance under the Act with FCIC or with an insurance provider reinsured by FCIC unless the person can show that the termination was improper and should not result in subsequent ineligibility.

(g) All applicants for insurance under the Act must advise the insurance provider, in writing at the time of application, of any previous applications for insurance or contracts of insurance under the Act within the last 5 years and the present status of any such applications or insurance.

§ 407.3 Premium rates, amounts of protection, and coverage levels.

(a) The Manager of FCIC shall establish premium rates, amounts of protection, and coverage levels for the insured crop that will be included in the actuarial documents on file in the agent's office. Premium rates, amounts of protection, and coverage levels may be changed from year to year in accordance with the terms of the policy.

(b) At the time the application for insurance is made, the person must elect an amount of protection and a coverage level from among those contained in the actuarial documents for the crop year.

§ 407.4 OMB control numbers.

The information collection activity associated with this rule has been submitted to OMB for their review and approval.

§ 407.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 407.6 [Reserved]

§ 407.7 The contract.

(a) The insurance contract shall become effective upon the acceptance by FCIC or the insurance provider of a complete, duly executed application for insurance on a form prescribed or approved by FCIC.

(b) The contract shall consist of the accepted application, Area Risk Protection Insurance Basic Provisions, Crop Provisions, Special Provisions, Actuarial Documents, and any amendments, endorsements, or options thereto.

(c) Changes made in the contract shall not affect its continuity from year to year.

(d) No indemnity shall be paid unless the person complies with all terms and conditions of the contract.

(e) The forms required under this part and by the contract are available at the office of the insurance provider, or such other location as specified by FCIC, if applicable.

§ 407.8 The application and policy.

(a) Application for insurance, developed in accordance with standards established by FCIC, must be made by any person who wishes to participate in the program in order to cover such person's share in the insured crop as landlord, owner-operator, tenant, or other crop ownership interest.

(1) No other person's interest in the crop may be insured under the application.

(2) To obtain coverage, the application must be submitted to the insurance provider on or before the applicable sales closing date on file in the insurance provider's local office.

(b) FCIC or the insurance provider may reject, no longer accept applications, or cancel existing insurance contracts upon the FCIC's determination that the insurance risk is excessive. Such determination must be made not later than 15 days before the cancellation date for the crop and may be made on an area, county, state, or crop basis.

§ 407.9 Area risk protection insurance policy.

This insurance is available for the 2014 and succeeding years.

[FCIC policies]

Department of Agriculture

Federal Crop Insurance Corporation

Area Risk Protection Insurance Policy

[Reinsured policies]

(Appropriate title for insurance provider)

(This is a continuous policy. Refer to Section 2.)

[FCIC policies]

Area Risk Protection Insurance (ARPI) provides protection against widespread loss of revenue or widespread loss of yield in a county. Individual farm revenues and yields are not considered under ARPI and it is possible that your individual farm may experience reduced revenue or reduced yield and you do not receive an indemnity under ARPI.

This is an insurance policy issued by the FCIC, a United States government agency, under the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501–1524) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA. Procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins),

issued by us and published on the Risk Management Agency's (RMA) Web site at *http://www.rma.usda.gov/* or a successor Web site, will be used in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to FCIC. Unless the context indicates otherwise, the use of the plural form of a word includes the singular and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the commitment to pay a premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict among the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by us, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by us, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. The order of priority among the policy is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) Special Provisions; (3) actuarial documents; (4) the applicable Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions, with (1) controlling (2), etc.

[Reinsured policies]

Area Risk Protection Insurance (ARPI) provides protection against widespread loss of revenue or widespread loss of yield in a county. Individual farm revenues and yields are not considered under ARPI and it is possible that your individual farm may experience reduced revenue or reduced yield and not receive an indemnity under ARPI.

This insurance policy is reinsured by the FCIC under the provisions of Subtitle A of the Federal Crop Insurance Act (7 U.S.C. 1501–1524) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA. We will use the procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins), as issued by FCIC and published on the Risk Management Agency (RMA's) Web site at *http://www.rma.usda.gov/* or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, FCIC will become your insurer, make all decisions in accordance with the provisions of this policy, including any loss payments, and be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the insurance provider providing insurance. Unless the context indicates otherwise, the use of the plural form of a word includes the singular and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the commitment to pay a premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict among the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. The order of priority among the policy is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) Special Provisions; (3) actuarial documents; (4) Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions, with (1) controlling (2), etc.

Terms and Conditions

Basic Provisions

1. Definitions

Abandon. Failure to continue to care for the crop, or providing care so insignificant as to provide no benefit to the crop.

Acreage report. A report required by section 8 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the actuarial documents by which you are required to submit your acreage report.

Act. Subtitle A of the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Actuarial documents. The part of the policy that contains information for the crop year which is available for public inspection in your agent's office and published on RMA's Web site, *http://www.rma.usda.gov/*, and which shows available plans of insurance, coverage levels, information needed to determine amounts of insurance, prices, premium rates, premium adjustment percentages, type (commodity types, classes, subclasses, intended uses), practice (irrigated practices, cropping practices, organic practices, intervals), insurable acreage, and other related information regarding crop insurance in the county.

Additional coverage. A level of coverage greater than catastrophic risk protection.

Administrative fee. An amount you must pay for catastrophic risk protection, and additional coverage for each crop year as specified in section 7 of these provisions, the Catastrophic Risk Protection Endorsement, or the Special Provisions, as applicable.

Agricultural experts. Persons who are employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought. Persons who have a personal or financial interest in you or the crop will not qualify as an agricultural expert. For example, contracting with a person for consulting would be considered to have a financial interest and a person who is a neighbor would be considered to have a personal interest.

Application. The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested.

Area. The general geographical region in which the insured acreage is located, designated generally as a county but may be a smaller or larger geographical area as specified in the actuarial documents.

Area Revenue Protection. A plan of insurance that provides protection against loss of revenue due to a county level production loss, a price decline, or a combination of both. This plan also includes upside harvest price protection, which increases your policy protection at the end of the insurance period if the harvest price is greater than the projected price and if there is a production loss.

Area Revenue Protection with the Harvest Price Exclusion. A plan of

insurance that provides protection against loss of revenue due to a county level production loss, price decline, or a combination of both. This plan does not provide upside harvest price protection.

Area Risk Protection Insurance (ARPI). Insurance coverage based on an area, not an individual, yield or revenue amount. There are three plans of insurance available under ARPI: Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection.

Area Yield Protection. A plan of insurance that provides protection against loss of yield due to a county level production loss. This plan does not provide protection against loss of revenue or upside harvest price protection.

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us in writing, whereby you assign your right to an indemnity payment for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation.

Buffer zone. A parcel of land, as designated in your organic plan, that separates commodities grown under organic practices from commodities grown under non-organic practices, and used to minimize the possibility of unintended contact by prohibited substances or organisms.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us or terminated in accordance with the policy terms.

Catastrophic risk protection (CAT). Coverage equivalent to 65 percent of yield coverage and 45 percent of price coverage, unless otherwise specified in the Special Provisions, and is the minimum level of coverage offered by FCIC, as specified in the actuarial documents for the crop, type, and practice. CAT is not available with Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion.

Catastrophic Risk Protection Endorsement. The part of the crop insurance policy that contains provisions of insurance that are specific to CAT.

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with 7 CFR part 205.

Certifying agent. A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

Class. A specific subgroup of commodity type.

Code of Federal Regulations (CFR). The codification of general rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. Rules published in the **Federal Register** by FCIC are contained in 7 CFR chapter IV. The full text of the CFR is available in electronic format at *http://ecfr.gpoaccess.gov/*.

Commodity. An agricultural good or product that has economic value.

Commodity Exchange Price Provisions (CEPP). A part of the policy that is used for crops for which ARPI is available, unless otherwise specified. This document includes the information necessary to derive the projected and harvest price for the insured crop, as applicable.

Commodity type. A specific subgroup of a commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same commodity.

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (See ''Policy'')

Contract change date. The calendar date, as specified in the Crop Provisions, by which changes to the policy, if any, will be made available in accordance with section 3 of these Basic Provisions.

Conventional farming practice. A system or process that is necessary to produce a commodity, excluding organic farming practices.

Cooperative Extension System. A nationwide network consisting of a state office located at each state's land-grant university, and local or regional offices. These offices are staffed by one or more agricultural experts who work in cooperation with the National Institute of Food and Agriculture, and who provide information to agricultural producers and others.

County. Any county, parish, political subdivision of a state, or other area specified on the actuarial documents shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement. A cover crop may be considered to be a second crop.

Credible data. Data of sufficient quality and quantity to be representative of the county.

Crop. The insurable commodity as defined in the Crop Provisions.

Cropping practice. A method of using a combination of inputs such as fertilizer, herbicide, and pesticide, and operations such as planting, cultivation, etc. to produce the insured crop. The insurable cropping practices are specified in the actuarial documents.

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown and designated by the calendar year in which the crop is normally harvested.

Days. Calendar days.

Delinquent debt. Has the same meaning as the term defined in 7 CFR part 400, subpart U.

Dollar amount of insurance per acre. The guarantee calculated by multiplying the expected county yield by the projected price and by the protection factor. Your dollar amount of insurance per acre is shown on your Summary of Protection. Following release of the harvest price, your dollar amount of insurance may increase if Area Revenue Protection was purchased and the harvest price is greater than the projected price.

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

Expected county revenue. The expected county yield multiplied by the projected price.

Expected county yield. The yield, established in accordance with section 15, contained in the actuarial documents on which your coverage for the crop year is based.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within USDA.

Final county revenue. The revenue determined by multiplying the final county yield by the harvest price with the result used to determine whether an indemnity will be due for Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion, and released by FCIC at a time specified in the Crop Provisions.

Final county yield. The yield, established in accordance with section 15, for each insured crop, type, and practice, used to determine whether an indemnity will be due for Area Yield Protection, and released by FCIC at a time specified in the Crop Provisions.

Final planting date. The date contained in the actuarial documents for

the insured crop by which the crop must be planted in order to be insured.

Final policy protection. For Area Revenue Protection only, the amount calculated in accordance with section 12(e).

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that a commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA farm number. The number assigned to the farm by the local FSA office.

Generally recognized. When agricultural experts or organic agricultural experts, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

Good farming practices. The production methods utilized to produce the insured crop, type, and practice and allow it to make normal progress toward maturity, which are: (1) for conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by organic agricultural experts for the area or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

Harvest price. A price determined in accordance with the CEPP and used to determine the final county revenue.

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurable interest. Your percentage of the insured crop that is at financial risk.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

Insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

Insured. The named person as shown on the application accepted by us. This term does not extend to any other person having an insurable interest in the crop (*e.g.,* a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

Insured crop. The crop in the county for which coverage is available under your policy as shown on the application accepted by us.

Intended use. The expected end use or disposition of the commodity at the time the commodity is reported.

Interval. A period of time designated in the actuarial documents.

Irrigated practice. A method of producing a crop by which water, from an adequate water source, is artificially applied in sufficient amounts by appropriate and adequate irrigation equipment and facilities and at the proper times necessary to produce at least the (1) yield expected for the area; (2) yield used to establish the production guarantee or amount of insurance/coverage on the irrigated acreage planted to the commodity; or (3) producer's established approved yield, as applicable. Acreage adjacent to water, such as but not limited to a pond, lake, river, stream, creek or brook, shall not be considered irrigated based solely on the proximity to the water. The insurable irrigation practices are specified in the actuarial documents.

Liability. (See ''Policy protection.'')

Limited resource farmer. Has the same meaning as the term defined by USDA at *http://www.lrftool.sc.egov.usda.gov* or a successor Web site.

Loss limit factor. Unless otherwise specified in the Special Provisions a factor of .18 is used to calculate the payment factor. This factor represents the percentage of the expected county yield or expected county revenue at which no additional indemnity amount is payable. For example, if the expected county yield is 100 bushels and the final county yield is 18 bushels, then no additional indemnity is due even if the yield falls below 18 bushels. The total indemnity will never be more than 100 percent of the final policy protection.

NASS. National Agricultural Statistics Service, an agency within USDA, or its successor, that publishes the official United States Government yield estimates.

Native sod. Acreage that has no record of being tilled (determined in accordance with FSA or other verifiable records acceptable to us) for the production of an annual crop on or before May 22, 2008, and on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing.

Offset. The act of deducting one amount from another amount.

Organic agricultural experts. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic crop. A commodity that is organically produced consistent with section 2103 of the Organic Foods Act of 1990 (7 U.S.C. 6502).

Organic farming practice. A system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

Organic plan. A written plan, in accordance with the National Organic Program published in 7 CFR part 205, that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the certifying agent.

Organic practice. The insurable organic farming practices specified in the actuarial documents.

Organic standards. Standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) and 7 CFR part 205.

Payment factor. A factor no greater than 1.0 used to determine the amount of indemnity to be paid in accordance with section 12(g).

Perennial crop. A plant, bush, tree or vine crop that has a life span of more than one year.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

Planted acreage. Except as otherwise specified in the Special Provisions, land in which seed, plants, or trees have been placed, appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice in accordance with good farming practices for the area.

Policy. The agreement between you and us to insure a commodity and consisting of the accepted application,

these Basic Provisions, the Crop Provisions, the Special Provisions, the CEPP, other applicable endorsements or options, the actuarial documents for the insured commodity, the CAT Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each commodity in each county will constitute a separate policy.

Policy protection. The liability amount calculated in accordance with section 6(f) unless otherwise specified in the Special Provisions.

Practice. Production methodologies used to produce the insured crop consisting of unique combinations of irrigated practice, cropping practice, organic practice, and interval as shown on the actuarial documents as insurable.

Prairie Pothole National Priority Area. Consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota, South Dakota, or any other county as specified on the RMA's Web site at *http://www.rma.usda.gov/,* or a successor Web site, or the Farm Service Agency, Agricultural Resource Conservation Program 2–CRP (Revision 4), dated April 28, 2008, or a subsequent publication.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the actuarial documents.

Production report. A written record showing your annual production in accordance with section 8. The report contains yield information for the current year, including acreage and production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by measurement of farm-stored production, or by other records of production approved by us in accordance with FCIC approved procedures.

Production reporting date. The date contained in the actuarial documents by which you are required to submit your production report.

Prohibited substance. Any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional or buffer zone acreage. Lists of such substances are contained at 7 CFR part 205.

Projected price. A price for each crop, type, and practice as shown in the actuarial documents, as applicable, determined in accordance with the CEPP, Special Provisions or the Crop Provisions, as applicable.

Protection factor (PF). The percentage you choose that is used to calculate the dollar amount of insurance per acre and policy protection.

Replanted crop. The same commodity replanted on the same acreage as the first insured crop for harvest in the same crop year. ARPI does not have a replant provision, therefore, it is only used for first and second crop determinations.

RMA. Risk Management Agency, an agency within USDA.

RMA's Web site. A Web site hosted by RMA and located at *http://www.rma.usda.gov/* or a successor Web site.

Sales closing date. The date contained in the actuarial documents by which an application must be filed and the last date by which you may change your crop insurance coverage for a crop year.

Second crop. With respect to a single crop year, the next occurrence of planting any commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured.

Share. Your insurable interest in the insured crop as an owner, operator, or tenant.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area, and is available for public inspection in your agent's office and published on RMA's Web site.

State. The state shown on your accepted application.

Subclass. A specific subgroup of class.

Subsidy. The portion of the total premium that FCIC will pay in accordance with the Act.

Subsidy factor. The percentage of the total premium paid by FCIC as a subsidy.

Substantial beneficial interest. An interest held by any person of at least 10 percent in you (*e.g.,* there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you. The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership. However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 2). The spouse of any individual applicant or individual insured will be presumed to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under the applicable state dissolution of marriage laws. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person.

Summary of protection. Our statement to you specifying the insured crop, dollar amount of insurance per acre, policy protection, premium and other information obtained from your accepted application, acreage report, and the actuarial documents.

Sustainable farming practice. A system or process for producing a commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'' above).

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy.

Tilled. The termination of existing plants by plowing, disking, burning, application of chemicals, or by other means to prepare acreage for the production of an annual crop.

Total premium. The amount of premium before subsidy, calculated in accordance with section 7(e)(1).

Transitional acreage. Acreage on which organic farming practices are

being followed that does not yet qualify to be designated as organic acreage.

Trigger revenue. The revenue amount calculated in accordance with section 12(b).

Trigger yield. The yield amount calculated in accordance with section 12(c).

Type. Categories of the insured crop consisting of unique combinations of commodity type, class, subclass, and intended use as shown on the actuarial documents as insurable.

Upside harvest price protection. Coverage provided automatically under the Area Revenue Protection plan of insurance. This coverage increases your final policy protection when the harvest price is greater than the projected price. This coverage is not available under either the Area Revenue Protection with the Harvest Price Exclusion or the Area Yield Protection plans of insurance.

USDA. United States Department of Agriculture.

Verifiable records. Has the same meaning as the term defined in 7 CFR part 400, subpart G.

Void. When the policy is considered not to have existed for a crop year.

Volatility factor. A measure of variation of price over time found in the actuarial documents.

2. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us. In accordance with section 3, FCIC may change the coverage provided from year to year.

(b) The following information must be included on your application for insurance or your application will not be accepted and no coverage will be provided:

(1) Your election of Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, or Area Yield Protection;

(2) The crop with all type and practice combinations insured as shown on the actuarial documents;

(3) Your elected coverage level;

(4) Your elected protection factor;

(5) Identification numbers for you as follows:

(i) You must include your social security number (SSN) if you are an individual (if you are an individual applicant operating as a business, you must provide an employer identification number (EIN) and you must also provide your SSN); or

(ii) You must include your EIN if you are a person other than an individual;

(6) Identification numbers for all persons who have a substantial beneficial interest in you:

(i) The SSN for individuals; or

(ii) The EIN for persons other than individuals and the SSNs for all individuals that comprise the person with the EIN if such individuals also have a substantial beneficial interest in you; and

(7) All other information required on the application to insure the crop.

(c) With respect to SSNs or EINs required on your application:

(1) Your application will not be accepted and no insurance will be provided for the year of application if the application does not contain your SSN or EIN. If your application contains an incorrect SSN or EIN for you, your application will be considered not to have been accepted, no insurance will be provided for the year of application and for any subsequent crop years, as applicable, and such policies will be void if:

(i) Such number is not corrected by you; or

(ii) You correct the SSN or EIN but:

(A) You cannot prove that any error was inadvertent (Simply stating the error was inadvertent is not sufficient to prove the error was inadvertent); or

(B) It is determined that the incorrect number would have allowed you to obtain disproportionate benefits under the crop insurance program, you are determined to be ineligible for insurance or you could avoid an obligation or requirement under any State or Federal law;

(2) With respect to persons with a substantial beneficial interest in you:

(i) The insurance coverage for all crops included on your application will be reduced proportionately by the percentage interest in you of persons with a substantial beneficial interest in you (presumed to be 50 percent for spouses of individuals) if the SSNs or EINs of such persons are included on your application, the SSNs or EINs are correct, and the persons with a substantial beneficial interest in you are ineligible for insurance;

(ii) Your policies for all crops included on your application, and for all applicable crop years, will be void if the SSN or EIN of any person with a substantial beneficial interest in you is incorrect or is not included on your application and:

(A) Such number is not corrected or provided by you, as applicable;

(B) You cannot prove that any error or omission was inadvertent (Simply stating the error or omission was inadvertent is not sufficient to prove the error or omission was inadvertent); or

(C) Even after the correct SSN or EIN is provided by you, it is determined that the incorrect or omitted SSN or EIN would have allowed you to obtain disproportionate benefits under the crop insurance program, the person with a substantial beneficial interest in you is determined to be ineligible for insurance, or you or the person with a substantial beneficial interest in you could avoid an obligation or requirement under any State or Federal law; or

(iii) Except as provided in sections 2(c)(2)(ii)(B) and (C), your policies will not be voided if you subsequently provide the correct SSN or EIN for persons with a substantial beneficial interest in you and the persons are eligible for insurance;

(d) When any of your policies are void under section 2(c):

(1) You must repay any indemnity that may have been paid for all applicable crops and crop years;

(2) Even though the policies are void, you will still be required to pay an amount equal to 20 percent of the premium that you would otherwise be required to pay; and

(3) If you previously paid premium or administrative fees, any amount in excess of the amount required in section 2(d)(2) will be returned to you.

(e) Notwithstanding any of the provisions in this section, you may be subject to civil, criminal or administrative sanctions if you certify to an incorrect SSN or EIN or any other information under this policy.

(f) If any of the information regarding persons with a substantial beneficial interest in you, changes:

(1) After the sales closing date for the previous crop year, you must revise your application by the sales closing date for the current crop year to reflect the correct information; or

(2) Less than 30 days before the sales closing date for the current crop year, you must revise your application by the sales closing date for the next crop year;

(3) And you fail to provide the required revisions, the provisions in section 2(c)(2) will apply; and

(g) If you are, or a person with a substantial beneficial interest in you is, not eligible to obtain an SSN or EIN, whichever is required, you must request an assigned number for the purposes of this policy from us:

(1) A number will be provided only if you can demonstrate you are, or a person with a substantial beneficial interest in you is, eligible to receive Federal benefits;

(2) If a number cannot be provided for you in accordance with section (2)(g)(1), your application will not be accepted; or

(3) If a number cannot be provided for any person with a substantial beneficial interest in you in accordance with section 2(g)(1), the amount of coverage for all crops on the application will be reduced proportionately by the percentage interest of such person in you.

(h) After acceptance of the application, you may not cancel this policy for the initial crop year unless you choose to insure the entire crop under another Federally reinsured plan of insurance with the same insurance provider on or before the sales closing date. After the first year, the policy will continue in force for each succeeding crop year unless canceled, voided or terminated as provided in this section.

(i) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(j) Any amount due to us for any policy authorized under the Act will be offset from any indemnity due you for this or any other crop insured with us under the authority of the Act.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date FCIC publishes the final county yield for the applicable crop year.

(k) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(k)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 2(k)(2) for the crop for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for overpaid indemnity and any other amounts due, including but not limited to, premium billed with a due date after the termination date for the crop year in which premium is earned, if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a written payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

(D) The termination date the policy was or would have been terminated under section 2(k)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.

(ii) If you are ineligible and a policy has been terminated in accordance with section 2(k)(2), you will not receive any indemnity, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 2(j), unless your policy was terminated in accordance with sections 2(k)(2)(i)(A), (B), (D), or (E).

(2) With respect to termination:

(i) Termination will be effective on:

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the premium billing date for the crop year (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity will be owed);

(B) For a policy with other amounts due, including but not limited to, premium billed with a due date after the termination date for the crop year in which premium is earned, the termination date immediately following the date you have a delinquent debt (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity will be owed);

(C) For all other policies that are issued by us under the authority of the Act, the termination date that coincides with the termination date for the policy with the delinquent debt, or if there is no coincidental termination date, the termination date immediately following the date you become ineligible;

(D) For execution of a written payment agreement and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment (for this purpose only, the crop year will start the day after the termination date and end on the next termination date, *e.g.,* if the termination date is November 30 and you fail to make a payment on November 15, 2011, your policy will terminate on November 30, 2010, for the 2011 crop year); or

(E) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under section 2(k)(2)(i)(A), (B), (C).

(ii) For all policies terminated under section 2(k)(2)(i)(A), (B), (D), or (E), any indemnities paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating circumstances is not grounds for reinstatement in the current crop year.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute a written payment agreement and make payments in accordance with the agreement (we will not enter into a written payment agreement with you if you have previously failed to make a scheduled payment under the terms of any other payment agreement with us or any other insurance provider); or

(iii) File a petition to have your debts discharged in bankruptcy (Dismissal of the bankruptcy petition before discharge will terminate all policies in effect retroactive to the date your policy would have been terminated in accordance with section 2(k)(2)(i).)

(4) If you are determined to be ineligible under section 2(k), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

(l) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person:

(1) If any married insured dies, disappears, or is judicially declared incompetent, the insured on the policy will automatically convert to the name of the spouse if:

(i) The spouse was included on the policy as having a substantial beneficial interest in the insured; and

(ii) The spouse has a share of the crop.

(2) The provisions in section 2(l)(3) will only be applicable if:

(i) Any partner, member, shareholder, etc., of an insured entity dies, disappears, or is judicially declared incompetent, and such event automatically dissolves the entity; or

(ii) An individual whose estate is left to a beneficiary other than a spouse or

left to the spouse and the criteria in section 2(l)(1) are not met, dies, disappears, or is judicially declared incompetent.

(3) If the death, disappearance, or judicially declared incompetence occurred:

(i) More than 30 days before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) Thirty days or less before the cancellation date, or on after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted on or before the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pays the premium.

(4) If any insured entity is dissolved for reasons other than death, disappearance, or judicially declared incompetence:

(i) Before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) On or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period.

(A) A new application for insurance must be submitted on or before the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pays the premium.

(5) If section 2(k)(2) or (4) applies, a remaining member of the insured person or the beneficiary is required to report to us the death, disappearance, judicial incompetence, or other event that causes dissolution of the entity not later than the next cancellation date, except if section 2(k)(3)(ii) applies, notice must be provided by the cancellation date for the next crop year.

(m) We may cancel your policy if no premium is earned for 3 consecutive years.

(n) The cancellation and termination dates are contained in the Crop Provisions.

(o) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign. You are still responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 8(g), and any other consequences, including administrative, criminal or civil sanctions, if any information has been misreported.

(p) If voidance, cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us or your policy is voided due to a conviction of the controlled substance provisions of the Food Security Act of 1985 or Title 21, a new application must be filed for the crop.

(1) Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

(2) Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment, or you otherwise become eligible, after the sales closing date, you cannot apply for insurance until the next crop year. For example, for the 2012 crop year, if crop A, with a termination date of October 31, 2012, and crop B, with a termination date of March 15, 2013, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2012, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2013, and an indemnity for the 2012 crop year may still be owed. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

3. Contract Changes

(a) We may change the terms and conditions of this policy from year to year.

(b) Any changes in policy provisions, the CEPP, amounts of insurance, expected county yields, premium rates, and program dates can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions. We may only revise this information after the contract change date to correct obvious errors (*e.g.,* the expected county revenue for a county was announced at $2,500 per acre instead of $250 per acre).

(c) After the contract change date, all changes specified in section 3(b) will also be available upon request from your crop insurance agent.

(d) Not later than 30 days prior to the cancellation date for the insured crop you will be provided, in accordance with section 20, a copy of the changes to the Basic Provisions, Crop Provisions, CEPP, if applicable, and Special Provisions.

(e) Acceptance of all the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

4. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions, and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) That is not grown on planted acreage;

(2) That is a type not generally recognized for the area;

(3) For which the information necessary for insurance (projected price, expected county yield, premium rate, etc.) is not included in the actuarial documents;

(4) That is a volunteer crop;

(5) Planted following the same crop on the same acreage and the first planting of the crop has been harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions (For example, the second planting of grain sorghum would not be insurable if grain sorghum had already been planted and harvested on the same acreage during the crop year);

(6) That is planted for experimental purposes; or

(7) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

(c) Although certain policy documents may state that a specific crop, type, or practice is not insurable, it does not mean all other crops, types, or practices are insurable. To be

insurable, the use of such crop, type, or practice must be a good faming practice, have been widely used in the county, and meet all the conditions in the Basic Provisions, the Crop Provisions, Special Provisions, and the actuarial documents.

5. Insurable Acreage

(a) Except as provided in section 5(c), the insurable acreage is all of the acreage of the insured crop for which a premium rate is provided by the actuarial documents, in which you have a share, and which is planted in the county listed on your accepted application. The dollar amount of insurance per acre, amount of premium, and indemnity will be calculated separately for each crop, type, and practice shown on the actuarial documents.

(1) The acreage must have been planted and harvested (grazing is not considered harvested for the purposes of this section) or insured (excluding pasture, rangeland, and forage, vegetation and rainfall insurance or any other specific policy listed in the Special Provisions) in at least one of the three previous crop years unless:

(i) Such acreage was not planted:

(A) In at least two of the three previous crop years to comply with any other USDA program;

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (e.g., a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial crop was on the acreage in at least two of the previous three crop years;

(ii) Such acreage constitutes five percent or less of the insured planted acreage of the crop, type and practice as shown on the actuarial documents in the county;

(iii) Such acreage was not planted or harvested because it was pasture or rangeland and the crop to be insured is also pasture or rangeland; or

(iv) The Crop Provisions or Special Provisions specifically allow insurance for such acreage.

(b) Only the acreage planted to the insured crop on or before the final planting date, as shown in the actuarial documents, and reported by the acreage reporting date and physically located in the county shown on your accepted application will be insured.

(c) We will not insure any acreage (and any uninsured acreage and production from uninsured acreage will not be included for the purposes of establishing the final county yield):

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where we determine you have failed to follow good farming practices for the insured crop;

(3) Where the conditions under which the crop is planted are not generally recognized for the area (for example, where agricultural experts determine that planting a non-irrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(4) Of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 13 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made for all first insured crop acreage that may be subject to an indemnity reduction if the first insured crop is insured under this policy, or on a first insured crop unit basis if the first insured crop is not insured under this policy (*e.g.,* if the first insured crop under this policy consists of 40 acres, or the first insured crop unit insured under another policy contains 40 planted acres, then no second crop can be insured on any of the 40 acres). In this case:

(i) If the first insured crop is insured under ARPI, you must provide written notice to us of your election not to insure acreage of a second crop by the acreage reporting date for the second crop if it is insured under ARPI, or before planting the second crop if it is insured under any other policy;

(ii) If the first insured crop is not insured under ARPI, at the time the first insured crop acreage is released by us or another insurance provider who insures the first insured crop (if no acreage in the first insured crop unit is released, this election must be made by the earlier of acreage reporting date for the second crop or when you sign the claim for the first insured crop);

(iii) If you fail to provide a notice as specified in section 5(c)(5)(i) or 5(c)(5)(ii), the second crop acreage will be insured in accordance with applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(iv) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(v) You must report the crop acreage that will not be insured on the applicable acreage report; and

(5) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in the same crop year in at least two of the last four years in which the insured crop was grown on the acreage; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 5(c)(5)(i).

(d) If the Governor of a State designated within the Prairie Pothole National Priority Area elects to make section 508(o) of the Act effective for the State, any native sod acreage greater than five acres located in a county contained within the Prairie Pothole National Priority Area that has been tilled after May 22, 2008, is not insurable for the first five crop years of planting following the date the native sod acreage is tilled.

(1) If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you will be required to repay the amount received and any premium for such acreage will be refunded to you.

(2) If we determine you have tilled less than five acres of native sod a year for more than one crop year, we will add all the native sod acreage tilled after May 22, 2008, and all such acreage will be ineligible for insurance for the first five crop years of planting following the date the cumulative native sod acreage tilled exceeds five acres.

6. Coverage, Coverage Levels, Protection Factor, and Policy Protection

(a) For all acreage of the insured crop in the county, you must select the same plan of insurance (*e.g.,* all Area Revenue Protection, all Area Revenue Protection with the Harvest Price Exclusion, or all Area Yield Protection), if such plans are available on the actuarial documents.

(b) You must choose a protection factor:

(1) Unless otherwise specified in the Special Provisions from a range of 80 percent to 120 percent;

(2) As a whole percentage from amounts specified; and

(3) For each crop, type, and practice (you may choose a different protection factor for each crop, type, and practice).

(c) You may select any coverage level shown on the actuarial documents for each crop, type, and practice.

(1) For Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion:

(i) CAT level of coverage is not available; and

(ii) With respect to additional level of coverage, you may select any coverage level specified in the actuarial documents for each crop, type, and practice. For example: You may choose a 75 percent coverage level for one crop, type, and practice (such as corn irrigated practice) and a 90 percent coverage level for another crop, type, and practice (corn non-irrigated practice).

(2) For Area Yield Protection:

(i) CAT level of coverage is available, and you may select the CAT level of coverage for any crop, type, and practice;

(ii) With respect to additional level of coverage, you may select any coverage level specified in the actuarial documents for each crop, type, and practice. For example: You may choose a 75 percent coverage level for one crop, type, and practice (corn irrigated practice) and a 90 percent coverage level for another crop, type, and practice (corn non-irrigated practice); and

(iii) You may have CAT level of coverage on one type and practice shown on the actuarial documents for the crop, and additional coverage on another type and practice for the same crop. You may also have different additional levels of coverage by type and practice.

(d) You may change the plan of insurance, protection factor, or coverage level, for the following crop year by giving written notice to us not later than the sales closing date for the insured crop.

(e) Since this is a continuous policy, if you do not select a new plan of insurance, protection factor, and coverage level on or before the sales closing date, we will assign the same plan of insurance, protection factor, and coverage level as the previous year.

(f) Policy protection for ARPI plans of insurance is calculated as follows:

(1) Multiply the dollar amount of insurance per acre for each crop, type, and practice by the number of acres insured for such crop, type and practice; and

(2) Multiply the result of paragraph (1) by your share.

(g) If the projected price cannot be calculated for the current crop year under the provisions contained in the CEPP and you previously chose Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion:

(1) Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion will not be provided and you will automatically be covered under the Area Yield Protection plan of insurance for the current crop year unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date;

(2) Notice of availability of the projected price will be provided on RMA's Web site by the date specified in the applicable projected price definition contained in the CEPP;

(3) The projected price will be determined by FCIC and will be released by the date specified in the applicable projected price definition contained in the CEPP; and

(4) Your coverage will automatically revert back to Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion, whichever is applicable, for the next crop year that revenue protection is available unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date.

7. Annual Premium and Administrative Fees

(a) The administrative fee:

(1) For CAT level of coverage will be an amount specified in the CAT Endorsement or the Special Provisions, as applicable;

(2) For additional levels of coverage is $30, or an amount specified in the Special Provisions, as applicable;

(3) Is payable to us on the premium billing date for the crop;

(4) Must be paid no later than the time premium is due or the amount will be considered a delinquent debt;

(5) If you select coverage in accordance with section 6(c)(2)(iii):

(i) Will be charged for both CAT and additional level of coverage if a producer elects both for the crop in the county; but

(ii) Will not be more than one additional and one CAT administrative fee no matter how many different coverage levels you choose for different type and practice combinations you insure for the crop in the county;

(6) Will be waived if you request it and:

(i) You qualify as a limited resource farmer; or

(ii) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived;

(7) Will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report you may be subject to criminal, civil and administrative sanctions; and

(8) If not paid when due, may make you ineligible for crop insurance and certain other USDA benefits.

(b) The premium is based on the policy protection calculated in section 6(f).

(c) The information needed to determine the premium rate and any premium adjustment percentages that may apply are contained in the actuarial documents.

(d) To calculate the premium and subsidy amounts for ARPI plans of insurance:

(1) Multiply your policy protection from section 6(f) by the applicable premium rate and any premium adjustment percentages that may apply;

(2) Multiply the result of paragraph (1) by the applicable subsidy factor (This is the amount of premium FCIC will pay);

(3) Subtract the result of paragraph (2) from the result of paragraph (1) to calculate the amount of premium you will pay.

(e) The amount of premium calculated in accordance with section 7(d)(3) is earned and payable at the time coverage begins. You will be billed for such premium and applicable administrative fees not earlier than the premium billing date specified in the actuarial documents.

(f) If the amount of premium calculated in accordance with section 7(d)(3) and administrative fees you are required to pay for any acreage exceeds the amount of policy protection for the acreage, coverage for those acres will not be provided (No premium or administrative fee will be due and no

indemnity will be paid for such acreage).

(g) Premium or administrative fees owed by you will be offset from an indemnity due you in accordance with section 2(j).

8. Report of Acreage and Production

(a) An annual acreage report must be submitted to us on our form for each insured crop (separate lines for each type and practice) in the county on or before the acreage reporting date contained in the actuarial documents.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report, on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) The amount of acreage of the crop in the county (insurable and not insurable) in which you have a share, the last date any acreage of the insured crop was planted, and the number of acres planted by such date (Acreage initially planted after the final planting date must be reported as uninsurable);

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The land identifier for the crop acreage (*e.g.,* legal description, FSA farm number or common land unit number if provided to you by FSA, etc.) as required on our form.

(d) We will not insure any acreage of the insured crop planted after the final planting date.

(e) Regarding the ability to revise an acreage report you have submitted to us:

(1) You cannot revise any information pertaining to the planted acreage after the acreage reporting date without our consent;

(2) Consent may only be provided if the information on the acreage report is clearly transposed, or you provide adequate evidence that we have or someone from USDA has committed an error regarding the information on your acreage report; and

(3) The provisions in section 8(e)(1) and (2) also pertain to land acquired after the acreage reporting date, and we may choose to insure or not insure the acreage, provided the crop meets the requirements in section 5 and section 8. This requirement does not apply to any acreage acquired through a transfer of coverage in accordance with section 17.

(f) Except as provided in section 8(h), your premium and indemnity, if any, will be based on your insured acreage and share on your acreage report or section 8(e), if applicable.

(g) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 8.

(h) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) Except as provided in section 8(h)(2), if you submit information on any report that is different than what is determined to be correct and the information reported on the acreage report results in:

(i) A lower liability than the actual, correct liability determined, the policy protection will be reduced to an amount consistent with the information reported on the acreage report; or

(ii) A higher liability than the actual, correct liability determined, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) If your share is misreported and the share is:

(i) Under-reported at the time of the acreage report, any claim will be determined using the share you reported; or

(ii) Over-reported at the time of the acreage report, any claim will be determined using the share we determine to be correct.

(i) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

(j) You may request an acreage measurement from FSA or a business that provides such measurement service prior to the acreage reporting date, submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, and if the acreage measurement shows the estimated acreage was incorrect, we will revise your acreage report to reflect the correct acreage:

(1) If an acreage measurement is only requested for a portion of the insured crop, type, and practice, you must separately designate the acreage for which an acreage measurement has been requested;

(2) If an acreage measurement is not provided to us by the time the final county revenue or final county yield, as applicable, is calculated, we may:

(i) Elect to measure the acreage, and finalize your claim in accordance with applicable policy provisions;

(ii) Defer finalization of the claim until the measurement is completed with the understanding that if you fail to provide the measurement prior to the termination date, your claim will not be paid; or

(iii) Finalize the claim in accordance with applicable policy provisions after you provide the acreage measurement to us; and

(3) Premium will still be due in accordance with sections 2(k) and 7 (If the acreage is not measured as specified in section 8(j) and the acreage measurement is not provided to us at least 15 days prior to the premium billing date, your premium will be based on the estimated acreage and will be revised, if necessary, when the acreage measurement is provided);

(4) If the acreage measurement is not provided by the termination date, you will be precluded from providing any estimated acreage for all subsequent crop years;

(5) If there is an irreconcilable difference between:

(i) The acreage measured by FSA or a measuring service and our on-farm measurement, our on-farm measurement will be used; or

(ii) The acreage measured by a measuring service, other than our on-farm measurement, and FSA, the FSA measurement will be used; and

(6) If the acreage report has been revised in accordance with sections 8(g) and 8(j), the information on the initial acreage report will not be considered misreported for the purposes of section 8(h).

(k) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all acreage, we may elect to determine the insurable acreage, by crop, type, practice, and share, or to deny liability on such acreage. If we deny liability for the unreported acreage, no premium will be due on such acreage and no indemnity will be paid.

(l) An annual production report must be submitted, unless otherwise specified in the Special Provisions, to us on our form for each insured crop (separate lines for each type and practice) in the county by the production reporting date specified in the actuarial documents.

(m) Unless otherwise authorized by FCIC, if you do not submit a production report to us by the production reporting date specified in the actuarial documents, your protection factor for your policy in the following crop year

will be limited to the lowest protection factor available.

(n) You must certify to the accuracy of the information on your production report and if you fail to accurately report your production, you will be subject to the provisions in 8(m), unless the information is corrected:

(1) On or before the production reporting date; or

(2) Because the incorrect information was the result of our error or the error of someone from USDA.

(o) If you do not have records to support the information on your production report, you will be subject to the provisions in 8(m).

(p) At any time we discover you have misreported any material information on your production report, you will be subject to the provisions in 8(m).

(q) If you do not submit a production report or you misreported your production report and you switch to another plan of insurance in the following crop year, you will be subject to having a yield assigned in accordance with FCIC procedures.

(r) Errors in reporting acreage, share, and other information required in this section, may be corrected by us at the time we become aware of such errors. However, the provisions regarding incorrect information in this section will apply.

9. Share Insured

(a) Insurance will attach:

(1) Only if the person completing the application has a share in the insured crop; and

(2) Only to that person's share, except that insurance may attach to another person's share of the insured crop if the other person has a share of the crop and:

(i) The application clearly states the insurance is requested for a person other than an individual (*e.g.,* a partnership or a joint venture); or

(ii) The application clearly states you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share. If you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share, you must provide evidence of the other party's approval (lease, power of attorney, etc.) and such evidence will be retained by us:

(A) You also must clearly set forth the percentage shares of each person on the acreage report; and

(B) For each landlord or tenant, you must report the landlord's or tenant's SSN, EIN, or other identification number we assigned for the purposes of this policy, as applicable.

(b) With respect to your share:

(1) We will consider included in your share under your policy, any acreage or interest reported by or for:

(i) Your spouse, unless such spouse can prove he/she has a separate farming operation, which includes, but is not limited to, separate land (transfers of acreage from one spouse to another is not considered separate land), separate capital, separate inputs, separate accounting, and separate maintenance of proceeds; or

(ii) Your child who resides in your household or any other member of your household, unless such child or other member of the household can demonstrate such person has a separate share in the crop (Children who do not reside in your household are not included in your share); and

(2) If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop, as applicable:

(i) The policy for the spouse or child or other member of the household will be void and the policy remaining in effect will be determined in accordance with section 18(c)(1) and (2);

(ii) The acreage or share reported under the policy that is voided will be included under the remaining policy; and

(iii) No premium will be due and no indemnity will be paid for the voided policy.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for both a minimum payment (such as a specified amount of cash, bushels, pounds, *etc.*) and a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for either a minimum payment or a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

10. Insurance Period

Unless specified otherwise in the Crop Provisions, coverage begins at the later of:

(a) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 2); or

(b) The date the insured crop is planted.

11. Causes of Loss

(a) ARPI provides protection against loss of revenue or against loss of yield in a county resulting from natural causes of loss that cause the final county yield or the final county revenue to be less than the trigger yield or the trigger revenue.

(b) Failure to follow good farming practices, or planting or producing a crop using a practice that has not been widely recognized as used to establish the expected county yield, is not an insurable cause of loss under ARPI.

12. Triggers, Final Policy Protection, Payment Factor, and Indemnity Calculations

(a) Individual farm revenues and yields are not considered when calculating losses under ARPI. It is possible that your individual farm may experience reduced revenue or reduced yield and you do not receive an indemnity under ARPI.

(b) To calculate the trigger revenue:

(1) For Area Revenue Protection, multiply the expected county yield by the greater of the projected or harvest price and by the coverage level.

(2) For Area Revenue Protection with the Harvest Price Exclusion, multiply the expected county yield by the projected price and by the coverage level.

(c) To calculate the Trigger Yield for Area Yield Protection, multiply the expected county yield by the coverage level.

(d) If the harvest price cannot be calculated for the current crop year under the provisions contained in the CEPP:

(1) Revenue protection will continue to be available; and

(2) The harvest price will be determined and announced by FCIC.

(e) The final policy protection for:

(1) Area Revenue Protection is calculated by:

(i) Multiplying the expected county yield by the greater of the harvest price or the projected price;

(ii) Multiplying the result of subparagraph (i) by your protection factor; and

(iii) Multiplying the result of subparagraph (ii) by your acres and by your share.

(2) Area Revenue Protection with the Harvest Price Exclusion and Area Yield Protection are equal to the policy protection and are calculated by:

(i) Multiplying the expected county yield by the projected price;

(ii) Multiplying the result of subparagraph (i) by your protection factor; and

(iii) Multiplying the result of subparagraph (ii) by your acres and by your share.

(f) An indemnity is due for:

(1) Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion if the final county revenue is less than the trigger revenue.

(2) Area Yield Protection if the final county yield is less than the trigger yield.

(g) The payment factor is calculated for:

(1) Area Revenue Protection by:

(i) Subtracting the final county revenue from the trigger revenue to determine the amount of loss;

(ii) Multiplying the expected county yield by the greater of the projected or harvest price and by the loss limit factor;

(iii) Subtracting the result of subparagraph (ii) from the trigger revenue; and

(iv) Dividing the result of subparagraph (i) by the result of subparagraph (iii) to obtain the payment factor.

(2) Area Revenue Protection with the Harvest Price Exclusion by:

(i) Subtracting the final county revenue from the trigger revenue to determine the amount of loss;

(ii) Multiplying the expected county yield by the projected price and by the loss limit factor;

(iii) Subtracting the result of subparagraph (ii) from the trigger revenue; and

(iv) Dividing the result of subparagraph (i) by the result of subparagraph (iii) to obtain the payment factor.

(3) Area Yield Protection by:

(i) Subtracting the final county yield from the trigger yield to determine the amount of loss;

(ii) Multiplying the expected county yield by the loss limit factor;

(iii) Subtracting the result of subparagraph (ii) from the trigger yield; and

(iv) Dividing the result of subparagraph (i) by the result of subparagraph (iii) to obtain the payment factor.

(h) Indemnities for all three ARPI plans of insurance are calculated by multiplying the final policy protection by the payment factor.

(i) Indemnities for all three ARPI plans of insurance are calculated following release of the final county yield and harvest price as specified in the Crop Provisions.

13. Indemnity and Premium Limitations

(a) With respect to acreage where you are due an indemnity for your first insured crop in the crop year, except in the case of double cropping described in section 13(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 13(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 13(a)(2)(ii).

(b) In lieu of the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions, the reduction in the amount of indemnity and premium specified in section 13(a) of these Basic Provisions, as applicable, will apply to any premium owed or indemnity paid in accordance with the Crop Provisions, and any applicable endorsement. This will apply:

(1) Even if another person plants the second crop on any acreage where the first insured crop was planted; or

(2) If you fail to provide any records we require to determine whether an insurable loss occurred for the second crop.

(c) You may receive a full indemnity for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped; and

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 13(c).

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.,* if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that another producer double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.,* if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

(e) If any Federal or State agency requires destruction of any insured crop or crop production, as applicable, because it contains levels of a substance, or has a condition, that is injurious to human or animal health in excess of the maximum amounts allowed by the Food and Drug Administration, other public health organizations of the United States or an agency of the applicable State, you must destroy the insured crop or crop production, as applicable, and certify that such insured crop or crop production has been destroyed prior to receiving an indemnity payment. Failure to destroy the insured crop or crop production, as applicable, will result in you having to repay any indemnity paid and you may be subject to administrative sanctions in accordance with section 515(h) of the Act and 7 CFR part 400, subpart R, and any applicable civil or criminal sanctions.

14. Organic Farming Practices

(a) Insurance will be provided for a crop grown using an organic farming practice for only those acres of the crop that meet the requirements for an organic crop on the acreage reporting date.

(b) If an organic type or practice is shown on the actuarial documents, the projected price, dollar amount of insurance, policy protection, premium rate, etc., for such organic crop, type and practice will be used unless otherwise specified in the actuarial documents. If an organic type or practice is not shown on the actuarial documents, the projected price, dollar amount of insurance, policy protection, premium rate, etc., for the non-organic crop, type and practice will be used.

(c) If insurance is provided for an organic farming practice as specified in section 14(a) and (b), only the following acreage will be insured under such practice:

(1) Certified organic acreage;

(2) Transitional acreage being converted to certified organic acreage in accordance with an organic plan; and

(3) Buffer zone acreage.

(d) On the date you report your acreage, you must have:

(1) For certified organic acreage, a written certification in effect from a certifying agent indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (A certificate issued to a tenant may be used to qualify a landlord or other similar arrangement);

(2) For transitional acreage, a certificate as described in section 14(d)(1), or written documentation from a certifying agent indicating an organic plan is in effect for the acreage; and

(3) Records from the certifying agent showing the specific location of each field of certified organic, transitional, buffer zone, and acreage not maintained under organic management.

15. Yields

(a) The data source used for the county yields will be based on the best available data and will be specified in the actuarial documents.

(b) Except as otherwise provided in this section, the data source used to establish the expected county yield will be the data source used to establish the final county yield.

(c) If the data source used to establish the expected county yield is not able to provide credible data to establish the final county yield because the data is no longer available, credible, or reflect changes that may have occurred after the yield was established;

(1) FCIC will determine the final county yield based on the most accurate data available from subsection (g), as determined by FCIC; or

(2) To the extent that practices used during the crop year change from those upon which the expected county yield is based, the final county yield may be adjusted to reflect the yield that would have resulted but for the change in practice. For example, if the county is traditionally 90 percent irrigated and 10 percent non-irrigated, but this year the county is now 50 percent irrigated and 50 percent non-irrigated, the final county yield will be adjusted to an amount as if the county had 90 percent irrigated acreage.

(d) If the final county yield is established from a data source other than that used to establish the expected county yield, FCIC will provide notice of the data source and the reason for the change at the time the final county yield is published.

(e) If yields are based on NASS data, the final county yield will be the most current NASS yield at the time FCIC determines the yield in accordance with the payment dates section of the applicable Crop Provisions.

(f) The final county yield determined by FCIC is considered final for the purposes of establishing whether an indemnity is due and will not be revised for any reason.

(g) Yields used under this insurance program for a crop, may be based on:

(1) Data collected by NASS, if elected by FCIC, regardless of whether such data is published or unpublished; or

(2) Crop insurance data, other USDA data, or other data sources, if elected by FCIC.

16. Assignment of Indemnity

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or

(2) To pay to all lienholders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(d) If we have received the properly executed assignment of indemnity form:

(1) Only one payment will be issued jointly in the names of all assignees and you; and

(2) Any assignee will have the right to submit all notices and forms as required by the policy.

17. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance.

(a) We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred.

(b) The transfer of coverage rights must be on our form and will not be effective until approved by us in writing.

(c) Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees.

(d) The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

18. Other Insurance

(a) Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop.

(b) If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute.

(c) If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did

not intend to have duplicate policies) and:

(1) One is an additional coverage policy and the other is a CAT policy:

(i) The additional coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or

(ii) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(2) Both are additional coverage policies or both are CAT policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(i) The same insurance provider and the insurance provider agrees otherwise; or

(ii) Different insurance providers and both insurance providers agree otherwise.

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement.

(1) Notices required to be given immediately may be by telephone or in person and confirmed in writing.

(2) The time the notice is provided will be determined by the time of our receipt of the written notice.

(3) If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All policy provisions, notices, and communications required to be sent by us to you will be:

(1) Provided by electronic means, unless:

(i) We do not have the ability to transmit such information to you by electronic means; or

(ii) You elect to receive a paper copy of such information;

(2) Sent to the location specified in your records with your crop insurance agent; and

(3) Will be conclusively presumed to have been received by you.

21. Access to Insured Crop and Records, and Record Retention

(a) We, and any employee of USDA authorized to investigate or review any matter relating to crop insurance (authorized employee of USDA), have the right to examine the insured crop and all records related to the insured crop and this policy, and any mediation, arbitration or litigation involving the insured crop as often as reasonably required during the record retention period.

(b) You must retain, and provide upon our request, or the request of any authorized employee of USDA, complete records pertaining to the planting, acres, share, replanting, inputs, production, harvesting and disposition of the insured crop for a period of three years after the end of the crop year or three years after the date of final payment of indemnity, whichever is later. This requirement also applies to all such records for acreage that is not insured.

(c) We, or any authorized employee of USDA, may extend the record retention period beyond three years by notifying you of such extension in writing.

(d) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to crop insurance, to obtain records relating to the planting, acres, share, replanting, inputs, production, harvesting, and disposition of the insured crop from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist in obtaining all records we or any authorized employee of USDA request from third parties.

(e) Failure to provide access to the insured crop or the farm, authorize access to the records maintained by third parties, or assist in obtaining all such records will result in a determination that no indemnity is due for the crop year in which such failure occurred.

[FCIC Policies]

22. Amounts Due Us

(a) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(b) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium amount or administrative fee due us. With respect to any premiums or administrative fees owed, interest will start to accrue on the first day of the month following the premium billing date specified in the actuarial documents, provided a minimum of 30 days have passed from the premium billing date.

(c) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned:

(1) Interest will start on the date that notice is issued to you for the collection of the unearned amount;

(2) Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us;

(3) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us;

(4) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR part 102; and

(5) The penalty for accounts more than 90 days delinquent is an additional 6 percent per annum.

(d) Interest on any amount due us found to have been received by you because of fraud, misrepresentation or presentation by you of a false claim will start on the date you received the amount with the additional 6 percent penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other federal criminal or civil statute.

(e) If we determine that it is necessary to contract with a collection agency, refer the debt to government collection centers, the Department of Treasury Offset Program, or to employ an attorney to assist in collection, you agree to pay all the expenses of collection.

(f) All amounts paid will be applied first to expenses of collection if any, second to the reduction of any penalties which may have been assessed, then to reduction of accrued interest, and finally to reduction of the principal balance.

[Reinsured policies]

22. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount owed to us or on any unpaid administrative fees owed to FCIC.

(1) For the purpose of premium amounts owed to us or administrative fees owed to FCIC, interest will start to accrue on the first day of the month following the premium billing date specified in the actuarial documents,

provided a minimum of 30 days have passed from the premium billing date.

(2) We will collect any unpaid amounts owed to us and any interest owed thereon and, prior to the termination date, we will collect any administrative fees and interest owed thereon to FCIC. After the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon for any CAT policy and we will collect any unpaid administrative fees and any interest owed thereon for additional coverage policies.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount.

(1) Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us.

(2) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see subsection (d) of this section), if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) The portion of the amounts owed by you for a policy authorized under the Act that are owed to FCIC may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37. Such amounts include all administrative fees, and the share of the overpaid indemnities and premiums retained by FCIC plus any interest owed thereon.

[FCIC Policies]

23. Appeal, Reconsideration, and Administrative and Judicial Review

(a) All determinations required by the policy will be made by us. All expected county yields and final county yields are calculated by us in accordance with section 15. However, calculations of expected county yields and final county yields are matters of general applicability.

(1) Any matter of general applicability is not subject to appeal under 7 CFR part 400, subpart J or 7 CFR part 11.

(2) Your only remedy is judicial review but if you want to seek judicial review of any determination by us that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

(3) The timeframe to request a determination of non-appealability from the Director of the National Appeals Division is not later than 30 days after the date the yields are published on the RMA Web site.

(b) If you disagree with our determinations:

(1) Except for determinations specified in section 23(b)(2), obtain an administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11; or

(2) For determinations regarding whether you have used good farming practices, request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J.

(c) If you fail to exhaust your administrative remedies under 7 CFR part 11 or the reconsideration process for determinations of good farming practices described in section 23(b)(2), as applicable, you will not be able to resolve the dispute through judicial review.

(d) If reconsideration for good farming practices under 7 CFR part 400, subpart J or appeal under 7 CFR part 11 has been initiated within the time frames specified in those sections and judicial review is sought, any suit against us must be:

(1) Filed not later than one year after the date of the decision rendered in the reconsideration process for good farming practices or administrative review process under 7 CFR part 11; and

(2) Brought in the United States district court for the district in which the insured farm involved in the decision is located.

(e) You may only recover contractual damages from us. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from us in administrative review, appeal or litigation.

[Reinsured policies]

23. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

(a) All expected county yields and final county yields are calculated by FCIC in accordance with section 15. However, calculations of expected county yields and final county yields are matters of general applicability.

(1) Any matter of general applicability is not subject to appeal under 7 CFR part 400, subpart J or 7 CFR part 11.

(2) Your only remedy is judicial review but if you want to seek judicial review of any FCIC determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

(3) The timeframe to request a determination of non-appealability from the Director of the National Appeals Division is not later than 30 days after the date the yields are published on RMA's Web site.

(b) With respect to good farming practices:

(1) We will make preliminary decisions regarding what constitutes a good farming practice.

(2) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice.

(3) If you do not agree with any determination made by FCIC regarding what constitutes a good farming practice:

(i) You may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J; or

(ii) You may file suit against FCIC as follows:

(A) You are not required to request reconsideration from FCIC before filing suit;

(B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located; and

(C) Suit must be filed against FCIC not later than one year after the date:

(*1*) Of the determination made by FCIC regarding what constitutes a good farming practice; or

(*2*) Reconsideration is completed, if reconsideration was requested under section 23(b)(2)(i).

(c) If you elect to bring suit against FCIC after seeking a Director's Review in accordance with section 23(a), such suit must be filed against FCIC in the United States district court for the district in which the insured acreage is located not later than one year after the date of the decision rendered by the Director. Under no circumstances can you recover any punitive, compensatory or any other damages from FCIC.

(d) With respect to any other determination under this policy:

(1) If you and we fail to agree on any determination not covered by sections

23(a) and (c), the disagreement may be resolved through mediation. To resolve any dispute through mediation, you and we must both:

(i) Agree to mediate the dispute;

(ii) Agree on a mediator; and

(iii) Be present or have a designated representative who has authority to settle the case present, at the mediation.

(2) If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), unless otherwise stated in this subsection or rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(3) If the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability. However, before such interpretation may be challenged in the courts, you must request a determination of non-appealability from the Director of the National Appeals Division not later than 30 days after the date the interpretation was published on RMA's Web site.

(4) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award.

(i) The statement must also include any amounts awarded for interest.

(ii) Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator.

(iii) All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

(5) Regardless of whether mediation is elected:

(i) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(ii) If you fail to initiate arbitration in accordance with section 23(d)(5)(i) and complete the process, you will not be able to resolve the dispute through judicial review;

(iii) If arbitration has been initiated in accordance with section 23(d)(5)(i) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and

(iv) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding on all parties.

(6) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 23(d)(5)(iii). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(e) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 27. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(f) Except as provided in section 23(g), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 24.

(g) In a judicial review only, you may recover attorney fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator for Compliance/Stop 0806, 1400 Independence Avenue, SW., Washington, DC 20250–0806.

24. Interest Limitations

We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the final county yield or final county revenue release date as specified in the applicable Crop Provision.

(a) Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity.

(b) The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

25. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

26. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by USDA.

(a) Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions.

(b) We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling equal to 20 percent of the premium paid or to be paid by you.

27. Applicability of State and Local Statutes

If the provisions of this policy conflict with statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with federal statutes, this policy, and the applicable regulations do not apply to this policy.

28. Concealment, Misrepresentation, or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you will still be required to pay 20 percent of the premium that you would otherwise be required to pay to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

(e) If you willfully and intentionally provide false or inaccurate information to us or FCIC, or you fail to comply with a requirement of FCIC, in accordance with 7 CFR part 400, subpart R, FCIC may impose on you:

(1) A civil fine for each violation in an amount not to exceed the greater of:

(i) The amount of the pecuniary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of this title; or

(ii) $10,000; and

(2) A disqualification for a period of up to 5 years from receiving any monetary or nonmonetary benefit provided under each of the following:

(i) Any crop insurance policy offered under the Act;

(ii) The Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7333 *et seq.*);

(iii) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*);

(iv) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*);

(v) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*);

(vi) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*);

(vii) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); and

(viii) Any federal law that provides assistance to a producer of a commodity affected by a crop loss or a decline in the prices of commodities.

29. Multiple Benefits

(a) If you are eligible to receive an indemnity under an additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop insurance payment and the amount of the loss, unless otherwise provided by law. The amount of loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(c) FSA or another USDA agency, as applicable, will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

30. Examples

The following are examples of the calculation of the premium, amount of insurance and indemnity for each of the three plans of insurance under ARPI. Your information will likely be different and you should consult the actuarial documents in your county and the policy information. The following facts are for illustration purposes only and apply to each of the examples.

Producer A farms 100 acres in county X and has a 100 percent share, or 1.000, in those acres. From the actuarial documents in county X, Producer A elects the 75 percent coverage level and a protection factor of 110 percent or 1.10. The actuarial documents in county X also show that the expected county yield is 141.4 bushels per acre, the projected price is $4.00, and the expected county revenue is $565.60. The subsidy factor for the 75 percent coverage level is .55 for revenue coverage and .59 for yield coverage. The loss limit factor is 18 percent or .18. At the end of the insurance period, for county X, FCIC releases a harvest price of $4.57 and a final county yield for county X of 75.0 bushels.

The premium rate is based on the published volatility factor and for this example is .0166 for Area Revenue Protection, .0146 for Area Revenue Protection with Harvest Price Exclusion, and .0116 for Area Yield Protection.

Area Revenue Protection example:

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor equals dollar amount of insurance

141.4 bushels × $4.00 × 1.1 = $622.16 dollar amount of insurance per acre

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share equals policy protection

$622.16 × 100.0 × 1.000 = $62,216 policy protection

Step 3: Calculate the Total Premium

Formula: Policy protection times premium rate equals total premium

$62,216 × .0166 = $1,033 total premium

Step 4: Calculate the Subsidy amount

Formula: Total premium times subsidy factor equals subsidy

$1,033 × .55 = $568 subsidy

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy equals producer premium

$1,033 − $568 = $465 producer premium

Step 6: Calculate the Final Policy Protection

Formula: Expected county yield times (greater of projected price or harvest price) times protection factor times acres times share equals Final Policy Protection

141.4 bushels × $4.57 × 1.10 × 100.0 × 1.000 = $71,082 final policy protection

Step 7: Calculate the Final County Revenue

Formula: Final county yield times harvest price equals final county revenue

75.0 bushels × $4.57 = $342.75 final county revenue

Step 8: Calculate the Trigger Revenue

Formula: Expected county yield times (greater of projected price or harvest price) times coverage level equals trigger revenue

141.4 bushels × $4.57 × .75 = $484.65 trigger revenue

Step 9: Calculate the Payment Factor

Formula: (Trigger revenue minus final county revenue) divided by (trigger revenue minus (expected county yield times the greater of projected or harvest price times loss limit factor)) equals payment factor

($484.65 − $342.75) ÷ ($484.65 − (141.4 × $4.57 × .18)) = .385 payment factor

Step 10: Calculate the Indemnity

Formula: Final policy protection times payment factor equals indemnity

$71,082 × .385 = $27,367 indemnity

Area Revenue Protection with Harvest Price Exclusion example:

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor equals dollar amount of insurance

141.4 bushels × $4.00 × 1.10 = $622.16 dollar amount of insurance per acre

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share equals policy protection

$622.16 × 100.0 × 1.000 = $62,216 policy protection

Step 3: Calculate the Total Premium

Formula: Policy protection times rate equals total premium

$62,216 × .0146 rate = $908 total premium

Step 4: Calculate the Subsidy Amount

Formula: Total premium times subsidy factor equals subsidy

$908 × .55 = $499 subsidy

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy equals producer premium

$908 − $499 = $409 producer premium

Step 6: Calculate the Final Policy Protection

Use the policy protection amount calculated at the beginning of the insurance period in Step 2

$62,216 policy protection

Step 7: Calculate the Final County Revenue

Formula: Final county yield times harvest price equals final county revenue

75.0 bushels × $4.57 = $342.75 final county revenue

Step 8: Calculate the Trigger Revenue

Formula: Expected county yield times projected price times coverage level equals trigger revenue

141.4 bushels × $4.00 × .75 = $424.20 trigger revenue

Step 9: Calculate the Payment Factor

Formula: (Trigger revenue minus final county revenue) divided by (trigger revenue minus (expected county yield times projected price times loss limit factor)) equals payment factor

($424.20 − $342.75) ÷ ($424.20 − (141.4 × $4.00 × .18)) = .253

Step 10: Calculate the Indemnity

Formula: Final policy protection times payment factor equals indemnity

$62,216 × .253 = $15741 indemnity

Area Yield Protection example:

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor equals dollar amount of insurance

141.4 bushels × $4.00 × 1.10 = $622.16 dollar amount of insurance per acre

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share = policy protection

$622.16 × 100.0 × 1.000 = $62,216 policy protection

Step 3: Calculate the Total Premium

Formula: policy protection times premium rate equals total premium

$62,216 × .0116 rate = $722 total premium

Step 4: Calculate the Subsidy amount

Formula: Total premium times subsidy factor equals subsidy

$722 × .59 subsidy factor = $426 subsidy

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy equals producer premium

$722 − $426 = $296 producer premium

Step 6: Calculate the Final Policy Protection

Use the policy protection amount calculated at the beginning of the insurance period in Step 2

$62,216 policy protection

Step 7: Calculate the Trigger Yield

Formula: Expected county yield times coverage level equals trigger yield

141.4 bushels times .75 = 106.1 bushels

Step 8: Calculate the Payment Factor

Formula: (Trigger yield minus final county yield) divided by (trigger yield minus (expected county yield times loss limit factor)) equals payment factor

(106.1 bushels − 75.0 bushels) ÷ (106.1 bushels − (141.4 bushels × .18)) = .386

Step 9: Calculate the Indemnity

Formula: Final policy protection times payment factor equals indemnity

$62,216 times .386 = $24,015 Indemnity

§ 407.10 Area risk protection insurance for barley.

The barley crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Barley Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the barley for grain.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will also be considered planted.

2. Insured Crop

The insured crop will be all barley:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested;

(d) Not planted into an established grass or legume;

(e) Not interplanted with another crop; and

(f) Not planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 1 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 1 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; all New Mexico counties except Taos County; Kansas; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New York; Massachusetts; and all states south and east thereof.	September 30.	June 30.
Arizona; California; and Clark and Nye Counties, Nevada	October 31	June 30.
All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo, and Las Animas Counties and all Colorado counties south and east thereof; all Nevada counties except Clark and Nye Counties; Taos County, New Mexico; and all other states except: Arizona, California, and (except) Kansas, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New York, and Massachusetts and all States south and east thereof.	March 15	November 30.

§ 407.11 Area risk protection insurance for corn.

The corn crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Corn Crop Insurance Provisions

1. Definitions

Harvest. Combining or picking corn for grain or cutting for hay, silage, fodder, or earlage.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, corn seed that is broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all field corn that is:

(1) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, high-oil corn blends containing mixtures of at least 90 percent high yielding yellow dent female plants with high-oil male pollinator plants, or commercial varieties of high-protein hybrids.

(2) Grown on insurable acreage in the county listed on the accepted application;

(3) Properly planted by the final planting date and reported on or before the acreage reporting date;

(4) Planted with the intent to be harvested; and

(5) Not planted into an established grass or legume or interplanted with another crop.

(b) Corn other than that specified in section 2(a)(1) including but not limited to high-amylose, high-oil or high-protein (except as authorized in section 2(a)(1)), flint, flour, hybrid seed corn, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn may be insurable under this policy if specified in the Special Provisions:

(1) The insurability requirements in 2(a) apply to this other corn and additional requirements for insurability may be stated for this other corn in the Special Provisions; and

(2) This other corn will be insured using the yields, rates, and prices for field corn unless otherwise specified in the actuarial documents.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.12 Area risk protection insurance for cotton.

The cotton crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Cotton Crop Insurance Provisions

1. Definitions

Harvest. Removal of the seed cotton from the stalk.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, cotton seed broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all upland cotton:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested.

(b) That is not (unless allowed by the Special Provisions):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage in which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than 50 percent of the small grain plants reach the heading stage.

(c) Cotton other than upland cotton may be insurable under this policy if specified in the Special Provisions:

(1) The insurability requirements in 2(a) apply to other cotton and additional requirements for insurability may be stated for other cotton in the Special Provisions; and

(2) Other cotton will be insured using the yields, rates, and prices for cotton unless otherwise specified in the actuarial documents.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to July 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to August 15 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31 ..	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28	November 30.
All other Texas counties and all other States	March 15	November 30.

§ 407.13 Area risk protection insurance for forage.

The forage crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Forage Crop Insurance Provisions

1. Definitions

Forage. Planted perennial alfalfa, perennial red clover, perennial grasses, or a mixture thereof, or other species as shown in the actuarial documents.

Harvest. Removal of the forage from the field, and rotational grazing.

Rotational grazing. The defoliation of the insured forage by livestock, within a pasturing system whereby the forage field is subdivided into smaller parcels and livestock are moved from one area to another, allowing a period of grazing followed by a period for forage regrowth.

2. Insured Crop

The insured crop will be the forage types shown on the actuarial documents:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Intended for harvest; and

(d) Not grown with another crop.

3. Insurable Acreage

In addition to section 5 of the Area Risk Protection Insurance Basic Provisions, acreage seeded to forage after July 1 of the previous crop year will not be insurable.

4. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county yields will be determined prior to May 1 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 31 following the crop year and following the determination of the final county yield.

5. Program Dates

November 30 is the cancellation and termination date for all states, or as specified in the Special Provisions. The contract change date is August 31 for all states, or as specified in the Special Provisions.

6. Annual Premium

In lieu of section 7(e) of the Area Risk Protection Insurance Basic Provisions, the annual premium is earned and payable on the acreage reporting date. You will be billed for premium due on the date shown in the actuarial documents. The premium will be determined based on the rate shown on the actuarial documents.

§ 407.14 Area risk protection insurance for peanuts

The peanut crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Peanut Crop Insurance Provisions

1. Definitions

Harvest. The completion of digging and threshing and removal of peanuts from the field.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, peanuts must initially be planted in a row pattern which permits mechanical cultivation, or that allows the peanuts to be cared for in a manner recognized by agricultural experts as a good farming practice. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions.

2. Insured Crop

(a) The insured crop will be all peanuts:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested as peanuts; and

(4) Not planted into an established grass or legume or interplanted with another crop.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and or final county yields will be determined prior to June 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to July 16 and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south thereof.	January 15 ..	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties south and east thereof; and all other states except New Mexico, Oklahoma, and Virginia.	February 28	November 30.
New Mexico; Oklahoma; Virginia; and all other Texas Counties	March 15	November 30.

§ 407.15 Area risk protection insurance for grain sorghum.

The grain sorghum crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Grain Sorghum Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the sorghum for grain or cutting for hay, silage, or fodder.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, sorghum seed broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all sorghum excluding hybrid sorghum seed:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested; and

(4) Not planted into an established grass or legume or interplanted with another crop.

(b) Other sorghum including hybrid sorghum seed may be insurable under this policy if specified in the Special Provisions:

(1) The insurability requirements in 2(a) apply to these other sorghum and additional requirements for insurability may be stated for these crops in the Special Provisions; and

(2) This other sorghum will be insured using the yields, rates, and prices for sorghum unless otherwise specified in the actuarial documents.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31 ..	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.16 Area risk protection insurance for soybean.

The soybean crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Soybean Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the soybeans.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted, unless specified otherwise in the Special Provisions.

2. Insured Crop

The insured crop will be all soybeans:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested; and

(d) Not planted into an established grass or legume or interplanted with another crop.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	January 31 ..	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.17 Area risk protection insurance for wheat.

The wheat crop insurance provisions for Area Risk Protection Insurance for the 2014 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Wheat Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the wheat for grain.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will also be considered planted.

2. Insured Crop

The insured crop will be all wheat:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested;

(d) Not planted into an established grass or legume;

(e) Not interplanted with another crop; and

(f) Not planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment Dates

(a) Unless otherwise specified in the Special Provisions the final county revenues and final county yields will be determined prior to April 1 following the crop year.

(b) If an indemnity is due, unless otherwise specified in the Special Provisions we will issue any payment to you prior to May 1 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
All Colorado counties except Alamosa, Conejos, Costilla, Rio Grande, and Saguache; all Montana counties except Daniels and Sheridan Counties; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties and all South Dakota counties east thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties; and all other states except Alaska, Arizona, California, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Utah, and Vermont.	September 30.	June 30.
Arizona; California; Nevada; and Utah	October 31 ..	June 30

State and county	Cancellation and termination dates	Contract change date
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	November 30.

Signed in Washington, DC, on June 20, 2013.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2013–15222 Filed 6–21–13; 4:15 pm]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules and Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0076, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–68; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–68. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–68 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE LISTED IN FAC 2005–68

Subject	FAR Case	Analyst
Expansion of Applicability of the Senior Executive Compensation Benchmark (Interim)	2012–017	Chambers.

SUPPLEMENTARY INFORMATION: Summary for the FAR rule follow. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2005–68 amends the FAR as specified below:

Expansion of Applicability of the Senior Executive Compensation Benchmark (FAR Case 2012–017) (Interim)

This interim rule amends the FAR to implement the statutorily-expanded reach of the limitation on the allowability of compensation costs for certain contractor personnel. This limitation on the allowability of compensation costs is an amount set annually by the Office of Federal Procurement Policy. Prior to the enactment of section 803 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), this limitation applied to a contractor's five most highly compensated employees in management positions at each home office and each segment of the contractor, with respect to all contracts subject to the FAR cost principles with all Federal agencies. In section 803, Congress expanded the application of the limitation so that it applies to all contractor employees, rather than just the top five executives in the case of contracts covered by Title 10 of the United States Code. Moreover, Congress in section 803(c)(2) stated that this expanded reach ''shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act'' (the date of enactment was December 31, 2011). Section 803(c)(1) also provided that this change shall be implemented in the FAR.

This interim rule implements section 803 and provides that for DoD, NASA, and Coast Guard contracts, the compensation limitation applies to all contractor employees, rather than just the top five executives. For contracts with agencies other than DoD, NASA, and the Coast Guard, the reach of the limitation was not changed by section 803 and therefore will continue to be a contractor's five most highly compensated employees in management positions at each home office and each segment of the contractor.

An analysis of data in the Federal Procurement Data System (FPDS) revealed that most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

Section 803 is being implemented in the FAR through two rulemakings. In accordance with section 803, this interim rule applies to the compensation costs of all contractor employees incurred after January 1, 2012, on all DoD, NASA, and Coast Guard contracts awarded on or after December 31, 2011. Concurrently, DoD, GSA, and NASA are issuing a proposed rule (FAR Case 2012–025) to solicit comments on the application of the requirements of section 803 to DoD, NASA, and Coast Guard contracts entered into before December 31, 2011.

Dated: June 10, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–68 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–68 is effective June 26, 2013.

Dated: June 17, 2013.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: June 10, 2013.

Laura Auletta,

Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 13, 2013.

Ronald A. Poussard,

Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2013–15211 Filed 6–25–13; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2005–68; FAR Case 2012–017; Docket 2012–0017, Sequence 1]

RIN 9000–AM38

Federal Acquisition Regulation; Expansion of Applicability of the Senior Executive Compensation Benchmark

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 803 of the National Defense Authorization Act for Fiscal Year 2012. In accordance with section 803, the interim rule expands the application to a broader group of contractor employees on contracts awarded by DoD, NASA, and the Coast Guard of the senior executive compensation benchmark amount which limits the reimbursement of compensation costs. This interim rule applies section 803 prospectively to contracts awarded on or after (but not before) the date of enactment of section 803 (which was December 31, 2011), to the contractor compensation costs incurred after January 1, 2012. In addition, also as part of the implementation in the FAR of section 803, DoD, GSA and NASA are separately issuing a proposed rule (FAR Case 2012–025) that addresses the retroactive application of section 803 to contractor compensation costs incurred after January 1, 2012, under contracts that had been awarded before December 31, 2011.

DATES: *Effective Date:* June 26, 2013.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 26, 2013 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–68, FAR Case 2012–017, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–017''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–017.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–017'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street, NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–68, FAR Case 2012–017, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at 202–501–3221, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–68, FAR Case 2012–017.

SUPPLEMENTARY INFORMATION:

I. Background

The National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81) was signed into law and effective on December 31, 2011. Section 803 of the law amended the standards for determining the individuals affected by the senior executive compensation benchmark amount. Specifically, section 803 expanded the applicability (reach) of the existing executive compensation cap so that in the case of DoD, NASA, and Coast Guard contracts the compensation cap would apply to all employees of a contractor (instead of just the ''five most highly compensated'' employees in management positions at each home office and each segment of the contractor).

In section 803(c)(2), Congress stated that the expanded reach of the compensation cap ''shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act'' (which was December 31, 2011). In addition, Congress in section 803(c)(1) stated that the amendments in section 803 shall be implemented in the FAR. In accordance with section 803(c)(1), DoD, GSA, and NASA are implementing section 803 in the FAR through the issuance of this interim rule and a separate proposed rule.

This interim rule amends FAR 31.205–6(p) to require that the incurred compensation costs for all contractor employees on all DoD, NASA, and Coast Guard contracts awarded on or after December 31, 2011, be subject to the senior executive compensation amount. The reference to 31.205–6(p) in FAR 52.216–7 is also updated to reflect this revision in 31.205–6(p).

DoD will separately handle the implementation of authority provided by 10 U.S.C. 2324(e)(1)(P), as amended by section 803(a), in which Congress has authorized the Secretary of Defense to establish ''one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.''

As noted above, section 803(c)(2) states that the amendments made by section 803 ''shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act,'' which was December 31, 2011. There are challenges with respect to the retroactive application of section 803 (*i.e.,* to the application of section 803 to contracts awarded before the enactment of section 803). The implementation of section 803 is similar to the implementation of section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85, November 18, 1997), which imposed a cap on Government contractor's allowable costs of ''senior executive'' compensation. Section 808, like section 803, retroactively applied to contracts that already existed on the date of its enactment; both statutes contain text which applied the statute to contracts awarded before, on, or after the date of enactment of the underlying act. In litigation on the application of section 808 to contracts awarded before the date of the enactment of the statute, the courts held that section 808 breached contracts awarded before the statutory date of enactment (*General Dynamics Corp.* v. *U.S.,* 47 Fed. Cl. 514 (2000); and *ATK Launch Systems, Inc.,* ASBCA 55395, 2009–1 BCA ¶ 34118 (2009)).

For these reasons, DoD, GSA, and NASA are implementing section 803 with both an interim rule and a proposed rule. This interim rule addresses only the prospective application of section 803, *i.e.,* to contracts awarded on or after its enactment (December 31, 2011). The separate proposed rule (FAR Case 2012–025) addresses the retroactive application of section 803 to contracts that had been awarded before its enactment. In other words, under this

bifurcated approach, DoD, GSA, and NASA are implementing section 803 through this interim rule for contracts awarded on or after the date of enactment (December 31, 2011) and, at the same time, DoD, GSA, and NASA are addressing in the proposed rule the retroactive application of section 803. DoD, GSA, and NASA seek public comments on both the interim and proposed rules (and, on the proposed rule, especially with respect to the potential complexities associated with applying section 803 to contracts that had been awarded before the date of its enactment).

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. However, an initial regulatory flexibility analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

An analysis of data in the Federal Procurement Data System (FPDS) revealed that most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. Furthermore, it is not expected that a substantial number of small entities will have any employees, other than possibly among the ''five most highly compensated'' management employees at each home office and each segment of the contractor, whose compensation costs exceed the executive compensation benchmark. The current benchmark amount is $763,029, for costs incurred after January 1, 2011 (77 FR 24226, April 23, 2012). However, at this time an estimate of the number of small entities whose reimbursement for the compensation costs of their contractor employees will be limited by this rule is not available.

The interim rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–68, FAR Case 2012–017) in correspondence.

IV. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 803 of Pub. L. 112–81, signed into law on December 31, 2011, required it to be implemented in the FAR within 180 days of enactment. This statute expands the existing executive compensation cap so that it would apply to all employees of a contractor instead of just the ''five most highly compensated'' management employees at each home office and each segment of the contractor for DoD, NASA, and Coast Guard contracts. Therefore, issuing an interim rule that is effective upon publication, prior to the receipt of public comment will allow agencies to immediately implement the requirements of this law. Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: June 10, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20115.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 2. Amend section 31.205–6 by revising paragraph (p) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) *Senior executive compensation limit.* (i) *Applicability.* This paragraph (p)(1) applies to the following:

(A) To all executive agencies, other than DoD, NASA and the Coast Guard, for contracts awarded before, on, or after December 31, 2011;

(B) To DoD, NASA, and the Coast Guard for contracts awarded before December 31, 2011;

(ii) *Costs incurred after January 1, 1998.* For costs incurred after January 1, 1998, for the compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under 41 U.S.C. 1127 are unallowable (10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 4304(a)(16)). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to section 804 of Pub. L. 105–261, the definition of ''senior executive'' in (p)(3) has been changed for compensation costs incurred after January 1, 1999.) (2) *All employee compensation limit.* (i) *Applicability.* This paragraph (p)(2) applies to DoD, NASA, and the Coast Guard for contracts awarded on or after December 31, 2011;

(ii) *Costs incurred after January 1, 1998.* For costs incurred after January 1, 1998, for the compensation of any contractor employee in excess of the benchmark compensation amount, determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP) under 41 U.S.C. 1127 are unallowable (10 U.S.C. 2324(e)(1)(P)).

(3) *Definitions.* As used in this paragraph (p)—

(i) *Compensation* means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(4) and (q) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) *Senior executive* means—

(A) Prior to January 2, 1999—

(*1*) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(*2*) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(*3*) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

(iii) *Fiscal year* means the fiscal year established by the contractor for accounting purposes.

(iv) *Contractor's headquarters* means the highest organizational level from which executive compensation costs are allocated to Government contracts.

* * * * *.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.216–7 by revising the date of the clause and paragraph (d)(2)(iv)(B) to read as follows.

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (JUNE 2013)

(d) * * *

(2) * * *

(iv) * * *

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205–6(p). Additional salary reference information is available at *http://www.whitehouse.gov/omb/procurement_index_exec_comp/.*

* * * * *

[FR Doc. 2013–15212 Filed 6–25–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0078, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–68; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–68, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–68, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: June 26, 2013.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–68 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE LISTED IN FAC 2005–68

Subject	FAR Case	Analyst
*Expansion of Applicability of the Senior Executive Compensation Benchmark (Interim)	2012–017	Chambers.

SUPPLEMENTARY INFORMATION: Summary for the FAR rule follow. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2005–68 amends the FAR as specified below:

Expansion of Applicability of the Senior Executive Compensation Benchmark (FAR Case 2012–017) (Interim)

This interim rule amends the FAR to implement the statutorily-expanded reach of the limitation on the allowability of compensation costs for certain contractor personnel. This limitation on the allowability of compensation costs is an amount set annually by the Office of Federal Procurement Policy. Prior to the enactment of section 803 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), this limitation applied to a contractor's five most highly compensated employees in management positions at each home office and each segment of the contractor, with respect to all contracts subject to the FAR cost principles with

all Federal agencies. In section 803, Congress expanded the application of the limitation so that it applies to all contractor employees, rather than just the top five executives in the case of contracts covered by Title 10 of the United States Code. Moreover, Congress in section 803(c)(2) stated that this expanded reach ''shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act'' (the date of enactment was December 31, 2011). Section 803(c)(1) also provided that this change shall be implemented in the FAR.

This interim rule implements section 803 and provides that for DoD, NASA, and Coast Guard contracts, the compensation limitation applies to all contractor employees, rather than just the top five executives. For contracts with agencies other than DoD, NASA, and the Coast Guard, the reach of the limitation was not changed by section 803 and therefore will continue to be a contractor's five most highly compensated employees in management positions at each home office and each segment of the contractor.

An analysis of data in the Federal Procurement Data System (FPDS) revealed that most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

Section 803 is being implemented in the FAR through two rulemakings. In accordance with section 803, this interim rule applies to the compensation costs of all contractor employees incurred after January 1, 2012, on all DoD, NASA, and Coast Guard contracts awarded on or after December 31, 2011. Concurrently, DoD, GSA, and NASA are issuing a proposed rule (FAR Case 2012–025) to solicit comments on the application of the requirements of section 803 to DoD, NASA, and Coast Guard contracts entered into before December 31, 2011.

Dated: June 10, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–15213 Filed 6–25–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31 and 52

[FAR Case 2012–025; Docket 2012–0025; Sequence 1]

RIN 9000–AM39

Federal Acquisition Regulation; Applicability of the Senior Executive Compensation Benchmark

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to continue the implementation of the requirements of section 803 of the National Defense Authorization Act for Fiscal Year 2012. The proposed rule seeks public comments on applying section 803 with respect to that provision's expansion with respect to contracts that had been awarded by DoD, NASA, and the Coast Guard before the date of enactment of section 803 (which was December 31, 2011) of the application of the senior executive compensation benchmark amount. Section 803 expands to a broader group of contractor employees the limitation on reimbursing compensation costs. As section 803 provides, this proposed rule would apply section 803 retroactively to contracts awarded before December 31, 2011, with respect to the contractor compensation costs incurred after January 1, 2012. In addition, also as part of the implementation in the FAR of section 803, DoD, GSA and NASA are separately issuing an interim rule (FAR Case 2012–017) that addresses the prospective application of section 803 to contracts awarded on or after December 31, 2011.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before August 26, 2013 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2012–025 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–025.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–025.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–025'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2012–025, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at 202–501–3221, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–025.

SUPPLEMENTARY INFORMATION:

I. Background

The National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81) was signed into law and effective on December 31, 2011. Section 803 of the law amended the standards for determining the individuals affected by the senior executive compensation benchmark amount. Specifically, section 803 expanded the applicability (reach) of the existing executive compensation cap, so that in the case of DoD, NASA, and Coast Guard contracts, the compensation cap would apply to all employees of a contractor (instead of just the ''five most highly compensated'' employees in management positions at each home office and each segment of the contractor). In section 803(c)(2), Congress stated that the expanded reach of the compensation cap ''shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act'' (which was December 31, 2011). In addition, Congress in section 803(c)(1) stated that the amendments in section 803 shall be implemented in the FAR. In accordance with section 803(c)(1), DoD, GSA, and NASA are implementing section 803 in the FAR through the issuance of this proposed rule and a separate interim rule.

In this proposed rule, DoD, GSA, and NASA are proposing to amend FAR 31.205–6(p) to require that the compensation costs incurred after January 1, 2012, for all contractor employees on all DoD, NASA, and Coast Guard contracts awarded before December 31, 2011, be subject to the senior executive benchmark compensation amount. The reference to 31.205–6(p) in FAR 52.216–7 was updated in the interim rule to reflect the revision in 31.205–6(p). This proposed rule uses the interim rule as its baseline.

DoD will separately handle the implementation of authority provided by 10 U.S.C. 2324(e)(1)(P), as amended by section 803(a), in which Congress has authorized the Secretary of Defense to establish ''one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.''

As noted above, section 803(c)(2) states that the amendments made by section 803 ''shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act,'' which was December 31, 2011. There are challenges with respect to the retroactive application of section 803 (*i.e.,* to the application of section 803 to contracts awarded before the enactment of section 803). The implementation of section 803 is similar to the implementation of section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85, November 18, 1997) which imposed a cap on Government contractor's allowable costs of ''senior executive'' compensation. Section 808, like section 803, retroactively applied to contracts that already existed on the date of its enactment; both statutes contain text which applied the statute to contracts awarded before, on, or after the date of enactment of the underlying act. In litigation on the application of section 808 to contracts awarded before the date of the enactment of the statute, the courts held that section 808 breached contracts awarded before the statutory date of enactment (*General Dynamics Corp.* v. *U.S.,* 47 Fed. Cl. 514 (2000); and *ATK Launch Systems, Inc.,* ASBCA 55395, 2009–1 BCA ¶ 34118 (2009)).

For these reasons, DoD, GSA, and NASA are implementing section 803 with both an interim rule and a proposed rule. The separate interim rule (FAR Case 2012–017) addresses the prospective application of section 803, *i.e.,* to contracts awarded on or after its enactment (December 31, 2011). This proposed rule addresses the retroactive application of section 803 to contracts

that had been awarded before its enactment. In other words, under this bifurcated approach, DoD, GSA, and NASA are implementing section 803 through the interim rule for contracts awarded on or after the date of enactment (December 31, 2011) and, at the same time, DoD, GSA, and NASA are addressing in this proposed rule the retroactive application of section 803. DoD, GSA, and NASA seek public comments on both the interim and proposed rules (and, on this proposed rule, especially with respect to the potential complexities associated with applying section 803 to contracts that had been awarded before the date of its enactment).

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA) has deemed that this is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993, and that this rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

An analysis of data in the Federal Procurement Data System (FPDS) revealed that most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. Furthermore, it is not expected that a substantial number of small entities will have any employees, other than possibly among the ''five most highly compensated'' management employees at each home office and each segment of the contractor, whose compensation costs exceed the executive compensation benchmark. The current benchmark amount is $763,029, for costs incurred after January 1, 2011 (77 FR 24226, April 23, 2012). However, at this time an estimate of the number of small entities whose reimbursement for the compensation costs of their contractor employees will be limited by this rule is not available.

The proposed rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR case 2012–025) in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: June 10, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 are revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20115.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 2. Amend section 31.205–6 by—

■ a. Removing from paragraph (p)(1)(i)(B), ''December 31, 2011'' and adding ''December 31, 2011, for costs incurred until January 1, 2012'' in its place; and

■ b. Revising paragraphs (p)(2)(i) and (ii).

The revisions read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) * * *

(2) * * *

(i) *Applicability.* This paragraph (p)(2) applies to DOD, NASA, and the Coast Guard for contracts awarded before, on or after December 31, 2011.

(ii) Costs incurred after January 1, 2012, for compensation of any contractor employee in excess of the benchmark compensation amount, determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP) under 41 U.S.C. 1127 are unallowable (10 U.S.C. 2324(e)(1)(P)). This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs.

[FR Doc. 2013–15214 Filed 6–25–13; 8:45 am]

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